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20 Attorneys for Defendants  
SAMSUNG ELECTRONICS CO., LTD.,  
21 SAMSUNG ELECTRONICS AMERICA, INC.,  
SAMSUNG SEMICONDUCTOR, INC., and  
22 SAMSUNG AUSTIN SEMICONDUCTOR, L.P.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION

RAMBUS INC.,  
Plaintiff,

v.  
HYNIX SEMICONDUCTOR INC., HYNIX  
SEMICONDUCTOR AMERICA INC., HYNIX  
SEMICONDUCTOR MANUFACTURING  
AMERICA INC.,

SAMSUNG ELECTRONICS CO., LTD., SAMSUNG  
ELECTRONICS AMERICA, INC., SAMSUNG  
SEMICONDUCTOR, INC., SAMSUNG AUSTIN  
SEMICONDUCTOR, L.P.,

NANYA TECHNOLOGY CORPORATION,  
NANYA TECHNOLOGY CORPORATION U.S.A.,

INOTERA MEMORIES, INC.,  
Defendants.

Case No. C 05 00334 RMW

SECOND AMENDED ANSWER TO  
FIRST AMENDED COMPLAINT FOR  
PATENT INFRINGEMENT AND  
JURY DEMAND AND  
AFFIRMATIVE DEFENSES AND  
COUNTERCLAIMS

JURY TRIAL DEMANDED

**SECOND AMENDED ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS**

Defendants and Counterclaim Plaintiffs Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., Samsung Semiconductor, Inc., and Samsung Austin Semiconductor, L.P., (collectively "Samsung") respectfully answer Plaintiff Rambus Inc.'s ("Rambus") First Amended Complaint for Patent Infringement and Jury Demand ("Complaint") in correspondingly numbered paragraphs as follows:

**THE PARTIES**

Samsung admits that Rambus is a corporation organized and existing under the laws of Delaware. Samsung is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 1 of the Complaint, and, on that basis, denies the same.

1. Samsung is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 of the Complaint, and, on that basis, denies the same.

2. Samsung admits that Samsung Electronics Co., Ltd. is a corporation organized and existing under the laws of Korea, with a principal place of business at 250, 2-Ka, Taepyung-Ro, Chung-Ku, Seoul, South Korea, 100-742. Samsung admits that Samsung Electronics America, Inc. is a wholly owned subsidiary of Samsung Electronics Co., Ltd., with its

1 principal place of business at 105 Challenger Road, Ridgefield Park, NJ 07660. Samsung admits  
2 that Samsung Semiconductor, Inc. is a wholly owned subsidiary of Samsung Electronics Co., Ltd.,  
3 with its principal place of business at 3655 North First Street, San Jose, CA 95134. Samsung  
4 admits that Samsung Austin Semiconductor, L.P. is a limited partnership owned by Samsung  
5 Electronics Co., Ltd., with its principal place of business at 12100 Samsung Boulevard, Austin, TX  
6 78754. Samsung denies that it transacts substantial business in this district on an ongoing basis.

7           3. Samsung is without knowledge or information sufficient to form a belief as  
8 to the truth of the allegations in Paragraph 4 of the Complaint, and, on that basis, denies the same.

9           4. Samsung is without knowledge or information sufficient to form a belief as  
10 to the truth of the allegations in Paragraph 5 of the Complaint, and, on that basis, denies the same.

11           5. To the extent Paragraph 6 applies to Samsung, Samsung denies those  
12 allegations. With respect to the other defendants, Samsung is without knowledge or information  
13 sufficient to form a belief as to the truth of the allegations in Paragraph 6 of the Complaint, and, on  
14 that basis, denies the same.

#### 15                           **NATURE OF THE ACTION**

16           6. Samsung admits the Complaint purports to be an action for patent  
17 infringement, but denies any wrongdoing or liability.

18           7. To the extent Paragraph 8 applies to Samsung, Samsung denies those  
19 allegations. With respect to the other defendants, Samsung is without knowledge or information  
20 sufficient to form a belief as to the truth of the allegations in Paragraph 8 of the Complaint, and, on  
21 that basis, denies the same.

#### 22                           **JURISDICTION AND VENUE**

23           8. Samsung admits that the Complaint purports to be an action for patent  
24 infringement, but denies any wrongdoing or liability. Samsung admits that this Court has subject-  
25 matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

26           9. Samsung does not contest personal jurisdiction in this Court. With respect to  
27 the other defendants, Samsung is without knowledge or information sufficient to form a belief as to  
28 the truth of the allegations in Paragraph 10 of the Complaint, and on that basis, denies the same. To

1 the extent not expressly admitted herein, Samsung denies the remaining allegations of Paragraph  
2 10.

3 10. Samsung does not contest that venue is proper in this Court. With respect to  
4 the other defendants, Samsung is without knowledge or information sufficient to form a belief as to  
5 the truth of the allegations in Paragraph 11 of the Complaint, and on that basis, denies the same. To  
6 the extent not expressly admitted herein, Samsung denies the remaining allegations of Paragraph  
7 11.

8 **PURPORTED FACTUAL BACKGROUND**

9 11. Samsung admits that Rambus has executed licenses in the past. To the  
10 extent not expressly admitted herein, Samsung denies the remaining allegations in Paragraph 12 of  
11 the Complaint.

12 12. Samsung admits that it is in the business of, *inter alia*, making, using, selling  
13 importing, and/or offering for sale products that consist of or include DDR2, GDDR2, and/or  
14 GDDR3 memory components, and DDR2 memory modules. Defendants lack sufficient  
15 information to admit or deny the remaining allegations of Paragraph 13, and on that basis, deny the  
16 same. To the extent not expressly admitted herein, Samsung denies the remaining allegations of  
17 Paragraph 13 of the Complaint.

18 13. Samsung is without knowledge or information sufficient to form a belief as  
19 to the truth of the allegations in Paragraph 14 of the Complaint, and on that basis, denies the same.

20 14. Samsung admits that it has made, used, sold, imported or offered for sale  
21 products that consist of or include DDR2, GDDR2, and/or GDDR3 memory components, and  
22 DDR2 memory modules. Defendants lack sufficient information to admit or deny the remaining  
23 allegations of Paragraph 15, and on that basis, deny the same. To the extent not expressly admitted  
24 herein, Samsung denies the remaining allegations of Paragraph 15 of the Complaint.

25 15. Samsung is without knowledge or information sufficient to form a belief as  
26 to the truth of the allegations in Paragraph 16 of the Complaint, and on that basis, denies the same.

27 16. Samsung is without knowledge or information sufficient to form a belief as  
28 to the truth of the allegations in Paragraph 17 of the Complaint, and on that basis, denies the same.

1           17. Samsung admits that on its face, U.S. Patent No. 6,182,184 (the “184  
2 Patent”) purports to have issued on January 30, 2001, and to be entitled “Method of Operating a  
3 Memory Device Having a Variable Data Input Length,” but denies it was duly and legally issued.  
4 All other allegations of Paragraph 18 not specifically admitted herein are denied.

5           18. Samsung admits that on its face, U.S. Patent No. 6,260,097 (the “097  
6 Patent”) purports to have issued on July 10, 2001, and to be entitled “Method and Apparatus for  
7 Controlling a Synchronous Memory Device,” but denies it was duly it was duly and legally issued.  
8 All other allegations of Paragraph 19 not specifically admitted herein are denied.

9           19. Samsung admits that on its face, U.S. Patent No. 6,266,285 (the “285  
10 Patent”) purports to have issued on July 24, 2001, and to be entitled “Method of Operating a  
11 Memory Device Having Write Latency,” but denies it was duly and legally issued. All other  
12 allegations of Paragraph 20 not specifically admitted herein are denied.

13           20. Samsung admits that on its face, U.S. Patent No. 6,314,051 (the “051  
14 Patent”) purports to have issued on November 6, 2001, and to be entitled “Memory Device Having  
15 Write Latency,” but denies it was duly and legally issued. All other allegations of Paragraph 21 not  
16 specifically admitted herein are denied.

17           21. Samsung admits that on its face, U.S. Patent No. 6,324,120 (the “120  
18 Patent”) purports to have issued on November 27, 2001, and to be entitled “Memory Device  
19 Having a Variable Data Output Length,” but denies it was duly and legally issued. All other  
20 allegations of Paragraph 22 not specifically admitted herein are denied.

21           22. Samsung admits that on its face, U.S. Patent No. 6,378,020 (the “8,020  
22 Patent”) purports to have issued on April 23, 2002, and to be entitled “System Having Double Data  
23 Transfer Rate and Intergrated [sic] Circuit Therefor,” but denies it was duly and legally issued. All  
24 other allegations of Paragraph 23 not specifically admitted herein are denied.

25           23. Samsung admits that on its face, U.S. Patent No. 6,426,916 (the “916  
26 Patent”) purports to have issued on July 30, 2002, and to be entitled “Memory Device Having a  
27 Variable Data Output Length and a Programmable Register,” but denies it was duly and legally  
28 issued. All other allegations of Paragraph 24 not specifically admitted herein are denied.

24. Samsung admits that on its face, U.S. Patent No. 6,452,863 (the “’863 Patent”) purports to have issued on September 17, 2002, and to be entitled “Method of Operating a Memory Device Having a Variable Data Input Length,” but denies it was duly and legally issued. All other allegations of Paragraph 25 not specifically admitted herein are denied.

25. Samsung admits that on its face, U.S. Patent No. 6,493,789 (the “’789 Patent”) purports to have issued on December 10, 2002, and to be entitled “Memory Device Which Receives Write Masking and Automatic Precharge Information,” but denies it was duly and legally issued. All other allegations of Paragraph 26 not specifically admitted herein are denied.

26. Samsung admits that on its face, U.S. Patent No. 6,496,897 (the “’897 Patent”) purports to have issued on December 17, 2002, and to be entitled “Semiconductor Memory Device Which Receives Write Masking Information,” but denies it was duly and legally issued. All other allegations of Paragraph 27 not specifically admitted herein are denied.

27. Samsung admits that on its face, U.S. Patent No. 6,546,446 (the “’6,446 Patent”) purports to have issued on April 8, 2003, and to be entitled “Synchronous Memory Device Having Automatic Precharge,” but denies it was duly and legally issued. All other allegations of Paragraph 28 not specifically admitted herein are denied.

28. Samsung admits that on its face, U.S. Patent No. 6,564,281 (the “’281 Patent”) purports to have issued on May 13, 2003, and to be entitled “Synchronous Memory Device Having Automatic Precharge,” but denies it was duly and legally issued. All other allegations of Paragraph 29 not specifically admitted herein are denied.

29. Samsung admits that on its face, U.S. Patent No. 6,584,037 (the “’037 Patent”) purports to have issued on June 24, 2003, and to be entitled “Memory Device Which Samples Data After an Amount of Time Transpires,” but denies it was duly and legally issued. All other allegations of Paragraph 30 not specifically admitted herein are denied.

30. Samsung admits that on its face, U.S. Patent No. 6,697,295 (the “’295 Patent”) purports to have issued on February 24, 2004, and to be entitled “Memory Device Having a Programmable Register,” but denies it was duly and legally issued. All other allegations of Paragraph 31 not specifically admitted herein are denied.

1           31. Samsung admits that on its face, U.S. Patent No. 6,701,446 (the “1,446  
2 Patent”) purports to have issued on March 2, 2004, and to be entitled “Power Control System for  
3 Synchronous Memory Device,” but denies it was duly and legally issued. All other allegations of  
4 Paragraph 32 not specifically admitted herein are denied.

5           32. Samsung admits that on its face, U.S. Patent No. 6,715,020 (the “5,020  
6 Patent”) purports to have issued on March 30, 2004, and to be entitled “Synchronous Integrated  
7 Circuit Device,” but denies it was duly and legally issued. All other allegations of Paragraph 33 not  
8 specifically admitted herein are denied.

9           33. Samsung admits that on its face, U.S. Patent No. 6,751,696 (the “696  
10 Patent”) purports to have issued on June 15, 2004, and to be entitled “Memory Device Having a  
11 Programmable Register,” but denies it was duly and legally issued. All other allegations of  
12 Paragraph 34 not specifically admitted herein are denied.

13           34. Samsung admits that on its face, U.S. Patent No. 6,807,598 (the “598  
14 Patent”) purports to have issued on October 19, 2004, and to be entitled “Integrated Circuit Device  
15 Having Double Data Rate Capability,” but denies it was duly and legally issued. All other  
16 allegations of Paragraph 35 not specifically admitted herein are denied.

17           35. Samsung is without knowledge or information sufficient to form a belief as  
18 to the truth of the allegations in Paragraph 36 of the Complaint, and on that basis, denies the same.

19           36. To the extent Paragraph 37 applies to Samsung, Samsung denies those  
20 allegations. With respect to the other defendants, Samsung is without knowledge or information  
21 sufficient to form a belief as to the truth of the allegations in Paragraph 37 of the Complaint, and on  
22 that basis, denies the same.

23           37. To the extent Paragraph 38 applies to Samsung, Samsung denies those  
24 allegations. With respect to the other defendants, Samsung is without knowledge or information  
25 sufficient to form a belief as to the truth of the allegations in Paragraph 38 of the Complaint, and on  
26 that basis, denies the same.

**COUNT 1: DENIAL OF ALLEGED INFRINGEMENT OF U.S. PATENT NO. 6,182,184**

38. Samsung refers to and incorporates herein its answers as provided in Paragraphs 1-38 above.

39. Samsung denies the allegations in Paragraph 40 of the Complaint.

**COUNT 2: DENIAL OF ALLEGED INFRINGEMENT OF U.S. PATENT NO. 6,260,097**

40. Samsung refers to and incorporates herein its answers as provided in Paragraphs 1-40 above.

41. Samsung denies the allegations in Paragraph 42 of the Complaint.

**COUNT 3: DENIAL OF ALLEGED INFRINGEMENT OF U.S. PATENT NO. 6,266,285**

42. Samsung refers to and incorporates herein its answers as provided in Paragraphs 1-42 above.

43. Samsung denies the allegations in Paragraph 44 of the Complaint.

**COUNT 4: DENIAL OF ALLEGED INFRINGEMENT OF U.S. PATENT NO. 6,314,051**

44. Samsung refers to and incorporates herein its answers as provided in Paragraphs 1-44 above.

45. Samsung denies the allegations in Paragraph 46 of the Complaint.

**COUNT 5: DENIAL OF ALLEGED INFRINGEMENT OF U.S. PATENT NO. 6,324,120**

46. Samsung refers to and incorporates herein its answers as provided in Paragraphs 1-46 above.

47. Samsung is without knowledge or information sufficient to admit or deny the allegations in Paragraph 48, and on that basis, denies the same.

**COUNT 6: DENIAL OF ALLEGED INFRINGEMENT OF U.S. PATENT NO. 6,378,020**

48. Samsung refers to and incorporates herein its answers as provided in Paragraphs 1-48 above.

49. Samsung is without knowledge or information sufficient to admit or deny the allegations in Paragraph 50, and on that basis, denies the same.



**COUNT 7: DENIAL OF ALLEGED INFRINGEMENT OF U.S. PATENT NO. 6,426,916**

50. Samsung refers to and incorporates herein its answers as provided in Paragraphs 1-50 above.

51. Samsung is without knowledge or information sufficient to admit or deny the allegations in Paragraph 52, and on that basis, denies the same.

**COUNT 8: DENIAL OF ALLEGED INFRINGEMENT OF U.S. PATENT NO. 6,452,863**

52. Samsung refers to and incorporates herein its answers as provided in Paragraphs 1-52 above.

53. Samsung is without knowledge or information sufficient to admit or deny the allegations in Paragraph 54, and on that basis, denies the same.

**COUNT 9: DENIAL OF ALLEGED INFRINGEMENT OF U.S. PATENT NO. 6,493,789**

54. Samsung refers to and incorporates herein its answers as provided in Paragraphs 1-54 above.

55. Samsung denies the allegations in Paragraph 56 of the Complaint.

**COUNT 10: DENIAL OF ALLEGED INFRINGEMENT OF U.S. PATENT NO. 6,496,897**

56. Samsung refers to and incorporates herein its answers as provided in Paragraphs 1-56 above.

57. Samsung denies the allegations in Paragraph 58 of the Complaint.

**COUNT 11: DENIAL OF ALLEGED INFRINGEMENT OF U.S. PATENT NO. 6,546,446**

58. Samsung refers to and incorporates herein its answers as provided in Paragraphs 1-58 above.

59. Samsung denies the allegations in Paragraph 60 of the Complaint.

**COUNT 12: DENIAL OF ALLEGED INFRINGEMENT OF U.S. PATENT NO. 6,564,281**

60. Samsung refers to and incorporates herein its answers as provided in Paragraphs 1-60 above.

61. Samsung denies the allegations in Paragraph 62 of the Complaint.

**COUNT 13: DENIAL OF ALLEGED INFRINGEMENT OF U.S. PATENT NO. 6,584,037**

62. Samsung refers to and incorporates herein its answers as provided in Paragraphs 1-62 above.

63. Samsung denies the allegations in Paragraph 64 of the Complaint.

**COUNT 14: DENIAL OF ALLEGED INFRINGEMENT OF U.S. PATENT NO. 6,697,295**

64. Samsung refers to and incorporates herein its answers as provided in Paragraphs 1-64 above.

65. Samsung denies the allegations in Paragraph 66 of the Complaint.

**COUNT 15: DENIAL OF ALLEGED INFRINGEMENT OF U.S. PATENT NO. 6,701,446**

66. Samsung refers to and incorporates herein its answers as provided in Paragraphs 1-66 above.

67. Samsung denies the allegations in Paragraph 68 of the Complaint.

**COUNT 16: DENIAL OF ALLEGED INFRINGEMENT OF U.S. PATENT NO. 6,715,020**

68. Samsung refers to and incorporates herein its answers as provided in Paragraphs 1-68 above.

69. Samsung denies the allegations in Paragraph 70 of the Complaint.

**COUNT 17: DENIAL OF ALLEGED INFRINGEMENT OF U.S. PATENT NO. 6,751,696**

70. Samsung refers to and incorporates herein its answers as provided in Paragraphs 1-70 above.

71. Samsung denies the allegations in Paragraph 72 of the Complaint.

**COUNT 18: DENIAL OF ALLEGED INFRINGEMENT OF U.S. PATENT NO. 6,807,598**

72. Samsung refers to and incorporates herein its answers as provided in Paragraphs 1-72 above.

73. Samsung denies the allegations in Paragraph 74 of the Complaint.

**DENIAL OF RAMBUS'S PRAYER FOR RELIEF**

74. Samsung denies that Rambus is entitled to be awarded any of the relief sought in its prayer for relief against Samsung. Samsung has not directly, indirectly, contributorily and/or by inducement, literally and/or by the doctrine of equivalents infringed—willfully or

otherwise—any of the patents asserted by Rambus. Rambus is not entitled to recover statutory damages, compensatory damages, or accounting, injunctive relief, costs, fees, interest, or any other type of recovery from Samsung. Rambus’s prayer should, therefore, be denied in its entirety and with prejudice, and Rambus should take nothing therefore. Samsung asks that judgment be entered for it and that it be awarded attorneys’ fees in defending against the Complaint, together with such other and further relief the Court deems appropriate.

## **I. AFFIRMATIVE DEFENSES**

As and for its affirmative defenses, Samsung alleges as follows:

### **First Affirmative Defense – Failure to State a Claim**

75. The Complaint fails to state a claim upon which relief can be granted because Samsung has not performed any act or thing and is not proposing to perform any act or thing in violation of any rights validly belonging to Plaintiff.

### **Second Affirmative Defense – Noninfringement**

76. The ’184, ’097, ’285, ’051, ’789, ’897, ’6,446, ’281, ’037, ’295, ’1,446, ’5,020, ’696, and ’598 Patents are invalid and unenforceable as set forth herein.

77. Samsung does not infringe and has not infringed, either directly or indirectly, does not and has not contributed to infringement, and does not and has not induced the infringement of any claim of the ’184, ’097, ’285, ’051, ’789, ’897, ’6,446, ’281, ’037, ’295, ’1,446, ’5,020, ’696, and ’598 Patents.

### **Third Affirmative Defense – Patent Invalidity**

78. The ’184, ’097, ’285, ’051, ’789, ’897, ’6,446, ’281, ’037, ’295, ’1,446, ’5,020, ’696, and ’598 Patents are invalid for failure to meet the “Conditions for Patentability” of 35 U.S.C. §§ 102 and 103 because the alleged inventions thereof are taught by, suggested by, and/or are obvious in view of, the prior art, and no claim of the ’184, ’097, ’285, ’051, ’789, ’897, ’6,446, ’281, ’037, ’295, ’1,446, ’5,020, ’696, and ’598 Patents can be validly construed to cover any Samsung device, system or operating method related to DRAM memory.

79. The ’184, ’097, ’285, ’051, ’789, ’897, ’6,446, ’281, ’037, ’295, ’1,446, ’5,020, ’696, and ’598 Patents are invalid for failure to meet the “Specification” requirements of 35

U.S.C. § 112 because the written specifications thereof do not describe the alleged inventions and the manner and process of making and using them in the form required by § 112, and no claim of the '184, '097, '285, '051, '789, '897, '6,446, '281, '037, '295, '1,446, '5,020, '696, and '598 Patents can be validly construed to cover any Samsung device, system or operating method related to DRAM memory.

#### **Fourth Affirmative Defense – Prosecution Laches**

80. Rambus's claims for relief and prayer for damages are barred, in whole or in part, because the equitable doctrine of prosecution laches renders the '184, '097, '285, '051, '789, '897, '6,446, '281, '037, '295, '1,446, '5,020, '696, and '598 Patents unenforceable.

#### **Fifth Affirmative Defense – Unclean Hands**

81. Rambus's claims for relief and prayer for damages are barred, in whole or in part, because the equitable doctrine of unclean hands renders the '184, '097, '285, '051, '789, '897, '6,446, '281, '037, '295, '1,446, '5,020, '696, and '598 Patents unenforceable.

#### **Sixth Affirmative Defense – Equitable Estoppel**

82. Rambus's claims for relief and prayer for damages are barred, in whole or in part, because the doctrine of equitable estoppel renders the '184, '097, '285, '051, '789, '897, '6,446, '281, '037, '295, '1,446, '5,020, '696, and '598 Patents unenforceable.

#### **Seventh Affirmative Defense – Estoppel**

83. Rambus is estopped by its conduct during the course of its membership in JEDEC from asserting, amongst others, any of the patents that originate from the 1990 Farmwald '898 application or the October, 1995 Ware '294 application, including but not limited to the '184, '097, '285, '051, '789, '897, '6,446, '281, '037, '295, '1,446, '5,020, '696, and '598 Patents against Samsung's SDRAM products, the facts and circumstances of which are set forth herein.

84. JEDEC with its associated committees is and, at all time relevant herein, has been the engineering standardization body for solid-state products in the United States and is part of the larger Electronic Industries Alliance ("EIA"). JEDEC has 300 member companies and 1800 individual committee participants. Standards promulgated by JEDEC, particularly for memories, are the predominant standards world-wide.

1           85.     At all times relevant herein, the semiconductor industry relied on JEDEC to  
2 develop the memory interface standard(s) for DRAMs and other memories, which are used  
3 predominantly in successive generations of computers, including mainframe, workstation, desktop,  
4 and laptop computers as well as many other electronic devices. JEDEC operated and continues to  
5 operate through committees populated by industry representatives with a background in the  
6 engineering and marketing requirements of the industry. In choosing standards, proposals for  
7 inclusion in or changes to existing standards or standards under consideration would be made at  
8 JEDEC meetings by its members. In the intervals between meetings, members would invest time  
9 and resources evaluating these proposals for suitability. Over a series of meetings, input from  
10 industry participants would be considered. Gradually, a consensus would tend to emerge on the  
11 specific set of features that best suited the then-current requirements of the market by cost and  
12 performance measures. JEDEC was always pushed to move the standard ahead at the pace desired  
13 by the market, and to promulgate new and evolving standards in advance of their actual need in the  
14 market.

15           86.     JEDEC has rules and procedures designed to guarantee that JEDEC (and its  
16 rules) is not used by its members for anticompetitive or illegal purposes. One specific kind of  
17 anticompetitive effect that JEDEC guards against its unintended inclusion in a JEDEC standard of  
18 patented elements or requirements. JEDEC does not prohibit standards that require the use of  
19 patented technology, but JEDEC does require that any decision to incorporate a patented element in  
20 a JEDEC standard be made with knowledge and full disclosure of the fact that a proposed standard  
21 includes or requires patented technology and any consequently required patent licenses that would  
22 be needed to implement the standard. JEDEC's policy is neutral on incorporation of patented  
23 elements in a standard so long as: (a) the standard setting committee has a full and fair opportunity  
24 to evaluate the existence of the patent or possible patent, and (b) the purported owner of the patent  
25 or possible patent is willing to license the patent royalty free or on reasonable and non-  
26 discriminatory terms.

1           87. Recognizing that no written rule can be so clear and precise that someone  
2 cannot find a way to evade or subvert its intent, JEDEC's procedure relied on the good faith  
3 participation of its members.

4           88. In 1992, Rambus joined JEDEC. Rambus became interested in joining  
5 JEDEC for two reasons. First, it provided Rambus with insight into the industry's efforts to  
6 develop a state-of-the-art open DRAM memory interface standard. Second, it presented Rambus  
7 with an opportunity to meet prospective customers and pitch RDRAM license agreements to those  
8 customers.

9           89. Rambus joined JEDEC at the time when many JEDEC members were  
10 advocating the adoption of a synchronous memory interface for DRAMs in place of the then-  
11 dominant asynchronous (or "conventional") DRAM interface. JEDEC's work on synchronous  
12 DRAM interface technology was independent of any work by Rambus in this area.

13           90. The first SDRAM standard was adopted in JEDEC in 1993.

14           91. The current SDRAM products represent foreseeable extensions and  
15 improvements of the base SDRAM standard which were known to or anticipated by Rambus and  
16 other JEDEC members when the base SDRAM standard was adopted at JEDEC in 1993. Many of  
17 the features first required by the JEDEC DDR SRAM, DDR2 SDRAM, and/or GDDR3 SDRAM  
18 interface standards were first included or proposed for inclusion during JEDEC's consideration,  
19 while Rambus was a JEDEC member, of standards for SDRAM and for DRAMs that would follow  
20 SDRAMs in the market. Other features required by the JEDEC DDR SDRAM, DDR2 SDRAM,  
21 GDDR3, and/or related interface standards were originally included in and required by the JEDEC  
22 standards for SDRAM.

23           92. As a result of its membership in JEDEC, Rambus agreed, both explicitly and  
24 implicitly, that it would abide by the rules governing JEDEC members. These rules, among other  
25 things, required JEDEC members, including Rambus, to disclose to other JEDEC members any  
26 patents, patent applications or intentions to file patents that might bear upon standards being  
27 considered by JEDEC committees.

1           93. By participating as a JEDEC member, Rambus knew or should have known  
2 that Samsung would be reasonably induced to rely upon Rambus's promises and representations  
3 that it would disclose any patents, patent applications, or intentions to file patents that may bear  
4 upon standards being considered by JEDEC.

5           94. Samsung reasonably relied upon Rambus's promises and representations and  
6 was induced to design many of its products in accordance with standards adopted by JEDEC.

7           95. Rambus's infringement allegations arise, at least in part, as a result of  
8 Samsung implementing one or more SDRAM standards adopted by JEDEC, through the design,  
9 manufacture, and sale of memory products complying with the JEDEC standards for, among others,  
10 SDRAM components and/or modules. Samsung memory products complying with JEDEC  
11 standards are sometimes referred to herein as "JEDEC standard products."

12           96. Samsung is informed and believes that Rambus never disclosed to other  
13 JEDEC committee members its intention to file any of the patents, or claims of the type or scope  
14 contained in patents that originated with the 1990 Farmwald '898 application, and/or the 1995  
15 Ware '294 application, including, but not limited to the '184, '097, '285, '051, '789, '897, '6,446,  
16 '281, '037, '295, '1,446, '5,020, '696, and '598 Patents asserted herein against Samsung's SDRAM  
17 products or other products, thereby breaching its duties of disclosure and good faith toward JEDEC  
18 and the members of JEDEC and, specifically, Samsung.

19           97. Through a series of licenses that began in 1994 and other ties that included  
20 Samsung's active promotion of Rambus technology and marketing of Rambus products at  
21 substantial expense to Samsung,<sup>1</sup> Rambus and Samsung formed a valuable business alliance in  
22 which Samsung supplied products based on Rambus technologies to the marketplace. During one  
23 of the numerous "partner meetings" that executives of Samsung and Rambus attended together to  
24 discuss, among other things, the status of their joint plans for Samsung's manufacture, sale, and  
25

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26 <sup>1</sup> Samsung has spent over \$200,000,000 on Rambus-related research, development, advertising, and  
27 marketing. Meanwhile, Samsung has sold \$3.2 billion worth of Rambus DRAM products to  
28 customers such as Sony for use in its Playstations, and has paid Rambus royalties of \$39.8 million  
for use of Rambus DRAM technology.



1 advertising of RDRAMs, Dave Mooring, president of Rambus at the time, stated that “Samsung  
2 continues to be a very strong and valuable partner for Rambus.” Rambus encouraged Samsung to  
3 develop products based on Rambus’s patents. As a result, Samsung became the largest maker and  
4 supplier of Rambus products.<sup>2</sup> The valuable business alliance between Rambus and Samsung  
5 allowed Rambus to market its company and products based on Rambus technology that could not  
6 otherwise have been done successfully without Samsung’s assistance.

7 98. Given the extensive and friendly business relationship outlined above,  
8 Samsung reasonably relied on Rambus’s assertions that Samsung was a valued business partner and  
9 was dealing with Samsung in good faith and with the intent to promote the valuable business  
10 alliance between them. As a result, Samsung was misled by Rambus into promoting Rambus  
11 technology in faithful adherence to the business alliance. Samsung was further misled into  
12 believing that Rambus was dealing with Samsung honestly, in good faith, and was not secretly  
13 taking actions that would harm Samsung’s business. Moreover, each of the several contracts  
14 carried with them duties of good faith and fair dealing that further led Samsung to believe that its  
15 business ally, Rambus, would not secretly work against Samsung’s interests.

16 99. As a direct and proximate result of Rambus’s failure to perform its duties and  
17 Rambus’s misrepresentations, Samsung has been damaged in that it has been required to pursue its  
18 legal remedies, including this suit, at great expense. Moreover, if Rambus is allowed to assert its  
19 patents in breach of its duties of disclosure and good faith to Samsung and other JEDEC members,  
20 and is successful, Samsung will be damaged in the amount sought by Rambus as license fees,  
21 which, as yet, is unknown.

#### 22 **Eighth Affirmative Defense – Implied License**

23 100. Because of its conduct during the course of its membership in JEDEC as  
24 outlined herein, Rambus’s claims of infringement of any of the patents that originate from the 1990  
25 Farmwald ’898 application or the October, 1995 Ware ’294 application, including but not limited to  
26  
27

28 <sup>2</sup> From 1995 until 2005, Samsung was the largest maker and seller of Rambus DRAM.



1 the '184, '097, '285, '051, '789, '897, '6,446, '281, '037, '295, '1,446, '5,020, '696, and '598  
2 Patents against Samsung's SDRAM products, are barred by the doctrine of implied license.

3 101. Because of its conduct in JEDEC and/or during the course of its business  
4 alliance with Samsung as outlined herein, Rambus's claims of infringement of any of the patents  
5 that originate from the 1990 Farmwald '898 application or the October, 1995 Ware '294  
6 application, including but not limited to the '184, '097, '285, '051, '789, '897, '6,446, '281, '037,  
7 '295, '1,446, '5,020, '696, and '598 Patents against Samsung's SDRAM products, are barred by the  
8 doctrine of implied license.

9 **Ninth Affirmative Defense – Marking and Limitations**

10 102. Rambus's claims for relief and prayer for damages are barred, in whole or in  
11 part, by 35 U.S.C. §§ 286 and 287.

**SECOND AMENDED COUNTERCLAIMS**

Defendant/Counterclaim Plaintiff Samsung Electronics Co., Ltd. (“SEC”) brings these counterclaims against Plaintiff/Counterclaim Defendant Rambus Inc. (“Rambus”). Defendant/ Counterclaim Plaintiff Samsung America Electronics, Inc., (“SEA”) joins in certain counterclaims as stated below.

103. SEC is a corporation organized and existing under the laws of Korea, with a principal place of business at 250, 2-Ka, Taepyung-Ro, Chung-Ku, Seoul, South Korea, 100-742. SEA is a corporation organized and existing under the laws of New Jersey, with a principal place of business at 105 Challenger Road, Ridgefield Park, New Jersey, 07660.

104. Rambus is a corporation incorporated and existing under the laws of Delaware. Rambus’s principal place of business is at 4440 El Camino Real, Los Altos, California, 94022.

**JURISDICTION AND VENUE**

105. This Court has subject matter jurisdiction over SEC’s and SEA’s patent counterclaims, which arise under the patent laws of the United States pursuant to 28 U.S.C. §§ 1331, 1338, 2201, and 2202. This Court has subject matter jurisdiction over SEC’s and SEA’s state law claims pursuant to 28 U.S.C. §§ 1332 and 1337, as SEC is a foreign citizen, SEA is a citizen of the State of New Jersey, Rambus is a citizen of the States of California and Delaware, and the amount in controversy exceeds \$75,000; further, some or all of these claims fall within the Court’s supplemental jurisdiction pursuant to 28 U.S.C. § 1367 because some of these claims are so related to the patent claims that they form part of the same case or controversy.

106. This Court has personal jurisdiction over Rambus, at least because Rambus filed its claims for patent infringement in this Court, in response to which these counterclaims are filed.

107. Venue is established in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400. Venue is additionally proper in this Court because Rambus has consented to the propriety of venue in this Court by filing its claim for patent infringement in this Court, in response

1 to which these counterclaims are filed. Further, Rambus is a resident of the State of California and  
2 is generally present here.

3 **GENERAL ALLEGATIONS**

4 108. On or about October 31, 2000, SEC and Rambus entered into an agreement  
5 entitled "SDR/DDR IC and SDR/DDR Memory Module Patent License Agreement Between  
6 Rambus Inc. and Samsung Electronics Co., Ltd." (the "SDR/DDR License").

7 109. Rambus claims to be the owner by assignment of U.S. Patent No. 6,182,184  
8 (the "'184 Patent"), which is entitled "Method of Operating a Memory Device Having a Variable  
9 Data Input Length," and which issued on January 30, 2001.

10 110. Rambus claims to be the owner by assignment of U.S. Patent No. 6,260,097  
11 (the "'097 Patent"), which is entitled "Method and Apparatus for Controlling a Synchronous  
12 Memory Device," and which issued on July 10, 2001.

13 111. Rambus claims to be the owner by assignment of U.S. Patent No. 6,266,285  
14 (the "'285 Patent"), which is entitled "Method of Operating a Memory Device Having Write  
15 Latency," and which issued on July 24, 2001.

16 112. Rambus claims to be the owner by assignment of U.S. Patent No. 6,314,051  
17 (the "'051 Patent"), which is entitled "Memory Device Having Write Latency," and which issued  
18 on November 6, 2001.

19 113. Rambus claims to be the owner by assignment of U.S. Patent No. 6,493,789  
20 (the "'789 Patent"), which is entitled "Memory Device Which Receives Write Masking and  
21 Automatic Precharge Information," and which issued on December 10, 2002.

22 114. Rambus claims to be the owner by assignment of U.S. Patent No. 6,496,897  
23 (the "'897 Patent"), which is entitled "Semiconductor Memory Device Which Receives Write  
24 Masking Information," and which issued on December 17, 2002.

25 115. Rambus claims to be the owner by assignment of U.S. Patent No. 6,546,446  
26 (the "'6,446 Patent"), which is entitled "Synchronous Memory Device Having Automatic  
27 Precharge," and which issued on April 8, 2003.

1           116. Rambus claims to be the owner by assignment of U.S. Patent No. 6,564,281  
2 (the “281 Patent”), which is entitled “Synchronous Memory Device Having Automatic Precharge,”  
3 and which issued on May 13, 2003.

4           117. Rambus claims to be the owner by assignment of U.S. Patent No. 6,584,037  
5 (the “037 Patent”), which is entitled “Memory Device Which Samples Data After An Amount of  
6 Time Transpires,” and which issued on June 24, 2003.

7           118. Rambus claims to be the owner by assignment of U.S. Patent No. 6,697,295  
8 (the “295 Patent”), which is entitled “Memory Device Having a Programmable Register,” and  
9 which issued on February 24, 2004.

10           119. Rambus claims to be the owner by assignment of U.S. Patent No. 6,701,446  
11 (the “1,446 Patent”), which is entitled “Power Control System for Synchronous Memory Device,”  
12 and which issued on March 2, 2004.

13           120. Rambus claims to be the owner by assignment of U.S. Patent No. 6,715,020  
14 (the “5,020 Patent”), which is entitled “Synchronous Integrated Circuit Device,” and which issued  
15 on March 30, 2004.

16           121. Rambus claims to be the owner by assignment of U.S. Patent No. 6,751,696  
17 (the “696 Patent”), which is entitled “Memory Device Having a Programmable Register,” and  
18 which issued on June 15, 2004.

19           122. Rambus claims to be the owner by assignment of U.S. Patent No. 6,807,598  
20 (the “598 Patent”), which is entitled “Integrated Circuit Device Having Double Data Rate  
21 Capability,” and which issued on October 19, 2004.

22           123. Samsung and Rambus executed the first license between them, which  
23 granted Samsung a license to use Rambus’s RDRAM technology, in November of 1994. This  
24 marked the beginning of what would be, at least until the litigation between them began, an  
25 extensive and cooperative business relationship. After two years of close cooperation on marketing  
26 and engineering to develop, market, and sell Samsung’s RDRAM, the parties negotiated a First  
27 Addendum to the RDRAM license in February of 1997. Samsung continued for the next three-and-  
28 a-half years to promote and manufacture Rambus’s product, and in July 2000 the parties negotiated

1 a Second Addendum to the RDRAM license. Samsung is still licensed to use RDRAM technology  
2 and continues to manufacture and sell RDRAMs today.

3 124. Samsung and Rambus executed the SDR/DDR License to Rambus's patents  
4 that allegedly cover, among other things, specific aspects of SDRAM and DDR DRAM  
5 technologies, in October 2000. This was the first time that the parties' relationship involved  
6 mainstream memory technologies, rather than just RDRAM. The SDR/DDR License required  
7 Rambus to notify Samsung if another, later license included a lower effective royalty rate; and,  
8 further to adjust Samsung's rate to the lower effective rate. (Section 3.8). Further, the SDR/DDR  
9 License also required good faith negotiation of a renewal. (Section 8.5). Finally, there is a duty of  
10 good faith and fair dealing in the SDR/DDR License.

11 125. The SDR/DDR License to Rambus's patents, executed between Samsung  
12 and Rambus, was just the most recent in a series of agreements that evidenced what Samsung  
13 believed to be a valuable business alliance between Samsung and Rambus in which both parties  
14 shared common business objectives.

15 126. Samsung's belief in Rambus's intentions towards Samsung to maintain a  
16 profitable business alliance was further bolstered by Rambus's assertions during their numerous  
17 "partner meetings" that Samsung was a valued business partner and was dealing with Samsung in  
18 good faith and with the intent to promote the valuable business alliance between them. Samsung  
19 was further and justifiably misled into believing that Rambus was dealing with Samsung honestly,  
20 in good faith, and was not secretly taking actions that would harm Samsung's business.

21 127. Samsung, on the basis of its justified understanding that Rambus and  
22 Samsung were valuable business partners in a profitable business alliance, did not suspect and  
23 could not have expected Rambus to behave in a way that would jeopardize that relationship nor that  
24 its business ally, Rambus, would secretly work against Samsung's interests.

25 **Rambus's Aiding and Abetting Neil Steinberg's**  
26 **Breach of Fiduciary Duties Owed to Samsung, a Current Client**

27 128. Mr. Neil Steinberg began work for Samsung as an in-house attorney on or  
28 about November 16, 1994. He remained at Samsung as in-house counsel until on or about August

1 7, 1998. At all relevant times during his employment by Samsung, Mr. Steinberg had an  
2 employment agreement with Samsung. The First Employment Agreement, dated November 16,  
3 1994, was effective until November 16, 1996. A Second Employment Agreement was effective  
4 from November 16, 1996, until Mr. Steinberg resigned from Samsung in August 1998. Both  
5 agreements contained a provision prohibiting Mr. Steinberg from engaging in any alternative  
6 employment during the term of the agreement without prior written consent from Samsung.<sup>3</sup>

7 129. Upon information and belief, by February of 1998, Rambus had secretly  
8 engaged Mr. Steinberg to actively work for it as an outside attorney, providing legal advice and  
9 strategies for the enforcement of legal claims, including patent claims against DRAM  
10 manufacturers, such as Samsung, notwithstanding the fact that Rambus knew Mr. Steinberg was  
11 employed as a full-time, in-house counsel for Samsung.

12 130. As an in-house attorney for Samsung, Mr. Steinberg owed Samsung a  
13 fiduciary duty of utmost good faith and fair dealing and undivided loyalty and honesty in fact.

14 131. Upon information and belief, at the request of Rambus, Mr. Steinberg  
15 actively worked to help Rambus, both as its outside and in-house counsel, to plan patent  
16 prosecution strategies, including actually working on patent applications, patent enforcement  
17 strategies, document handling and retention strategies for use in litigation, and to take other  
18 measures to extract royalties from manufacturers of DRAMs, including Samsung. Further, upon  
19 information and belief, Mr. Steinberg used information about Samsung's business and DRAM  
20 products in working for Rambus while he was under contractual and fiduciary duties not to disclose  
21 such information about Samsung's business or to use it contrary to Samsung's interests, regardless  
22 of whether such information was trade secret.

23 132. More specifically, upon information and belief, Rambus's efforts to extract  
24 royalties from Samsung for its SDR and DDR SDRAM sales began in 1997, when Rambus hired  
25 Mr. Joel Karp, a senior managing director at Samsung who negotiated, among other licenses, the  
26 RDRAM license with Rambus on behalf of Samsung. Because Samsung was not privy to  
27

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28 <sup>3</sup> A copy of Mr. Steinberg's Second Employment Agreement is attached as Exhibit A.

1 Rambus's patent acquisition and enforcement strategies and had no way to know that Rambus was  
2 planning to target Samsung's products, it had no reason to be alarmed when Rambus, its strategic  
3 business partner, hired Mr. Karp to be its Vice President of Intellectual Property. Also unknown to  
4 Samsung at the time was the fact that, after Mr. Karp left Samsung, he stayed in touch with an in-  
5 house Samsung attorney, Neil Steinberg. Indeed, while he was still at Samsung (and Mr. Karp was  
6 at Rambus), Mr. Steinberg spoke with Mr. Karp on the phone three to four times a week, oftentimes  
7 about Samsung matters. Such frequent conversations could not be explained as merely friendly  
8 chats, given that Samsung's subsequent internal investigation has confirmed that Mr. Karp and Mr.  
9 Steinberg were not close social friends and infrequently socialized during their mutual employment  
10 at Samsung.

11           133. Upon information and belief, due to Mr. Steinberg's role as Samsung's  
12 trusted in-house counsel, Mr. Steinberg was privy to extensive Samsung confidential and  
13 proprietary information that he discussed with Mr. Karp while still employed by Samsung. In  
14 particular, during his employment with Samsung, Mr. Steinberg primarily worked on Samsung  
15 patents relating to DRAM technology and was also involved in litigation regarding patents being  
16 asserted against Samsung. Mr. Steinberg, therefore, was privy to confidential and sensitive  
17 information about DRAM products, including SDRAM and DDR SDRAM, that were still in  
18 development at Samsung, as well as confidential information about inventions and innovations that  
19 Samsung included in its DRAM products. For example, Mr. Steinberg helped draft patent claims  
20 during prosecution of a patent application that issued as U.S. Patent No. 5,835,956 (the "'956  
21 Patent"). The '956 Patent relates to DRAM technology and is asserted as prior art to the patents-in-  
22 suit in co-pending patent litigation. In fact, Mr. Steinberg prosecuted at least eight Samsung  
23 DRAM patents, including U.S. Patent Nos. 6,438,083, 6,343,036, 6,279,116, 5,838,990, 5,835,956,  
24 5,703,828, 5,631,871, and 559,008.

25           134. Mr. Steinberg was also made aware of Samsung's then-future development  
26 plans for DRAM products through his use of product roadmaps in discovery in litigation and in  
27 patent licensing endeavors. In addition, Mr. Steinberg was intimately familiar with Samsung's  
28 proprietary patent prosecution and licensing strategies, which he implemented while employed as



1 Samsung's in-house counsel. Further, Mr. Steinberg had worked with Samsung employees on a  
2 strategy to draft patent claims to protect Samsung's specific implementation of JEDEC standard  
3 features of SDRAM and DDR SDRAM Technology, and was intimately familiar with how  
4 Samsung's implementation of JEDEC features was done in its products and how Samsung planned  
5 to protect those features. The '956 patent was work product as part of this effort to protect  
6 Samsung's implementation of its JEDEC-compliant products and features.

7 135. Armed with this wealth of knowledge, Mr. Steinberg was speaking to Mr.  
8 Karp at Rambus about Samsung matters three to four times a week, including such times when he  
9 was working on patent protection for Samsung's implementation of JEDEC standards, such as the  
10 '956 patent application and other projects. Upon information and belief, because Mr. Karp's job at  
11 Rambus was to implement a patent-enforcement strategy against DRAM manufacturers, including  
12 Samsung, Mr. Karp was particularly interested in learning proprietary information from Mr.  
13 Steinberg about Samsung's DRAM products and product plans. Samsung did not even know about  
14 these communications at the time, and certainly not of their content. Upon information and belief,  
15 however, the matters discussed between Mr. Steinberg and Mr. Karp during those secret  
16 conversations included the projects that Mr. Steinberg was working on while at Samsung from late  
17 1997 to August 1998, as well as proprietary information relating to Samsung's DRAM products  
18 and technology and related inventions and innovations, future products, legal strategies, and  
19 Samsung patent prosecution and licensing strategies.

20 136. It is particularly notable that, at this same time, Mr. Karp was secretly  
21 meeting with outside counsel for Rambus to plan suits against Samsung and others. Indeed,  
22 contemporaneous internal Rambus documents, revealed for the first time during the *Infineon*  
23 unclean-hands trial in 2005, state that Rambus was making itself "battle ready" for litigation, and  
24 was pursuing patent coverage that would include features of non-Rambus DRAMs. This "strategic  
25 licensing and litigation" strategy was being planned by Mr. Karp and presented to the Rambus  
26 Board of directors at the same time that Mr. Karp was speaking with Mr. Steinberg three to four  
27 times a week about Samsung matters. Documents revealed for the first time during the *Infineon*  
28



1 2005 trial showed that during the winter and spring of 1998, Rambus had under Mr. Karp's  
2 supervision reverse engineered Samsung products to analyze them for infringement lawsuits.

3 137. After Mr. Steinberg officially resigned from Samsung in August 1998, he  
4 continued working for Rambus as outside counsel, eventually joining Rambus full-time as in-house  
5 counsel. Although Mr. Steinberg was no longer employed as in-house counsel for Samsung, he  
6 still owed continuing duties to safeguard Samsung's confidential and proprietary information.  
7 These duties arose from Mr. Steinberg's employment contract, which imposed continuing duties of  
8 confidentiality, as well as from Mr. Steinberg's ethical obligations owed to Samsung as a former  
9 client. Upon information and belief, Mr. Steinberg violated these duties by continuing to disclose  
10 and use Samsung proprietary information in his work for Rambus. In particular, upon information  
11 and belief, Mr. Steinberg continued to make disclosure and use of Samsung information when he  
12 was an outside attorney for Rambus and prosecuting Rambus patents relating to SDRAM and DDR  
13 SDRAM technology. Further, upon information and belief, Mr. Steinberg also disclosed and used  
14 Samsung information as in-house counsel for Rambus, where he reported to Mr. Karp and was  
15 handling patent prosecution, licensing, and litigation matters relating to SDRAM and DDR  
16 SDRAM technologies.

17 138. Rambus's change in its patent posture is evidence of Mr. Steinberg's  
18 revelations of Samsung confidential information to Rambus. Before Mr. Steinberg was requested  
19 to breach his fiduciary and contractual duties to Samsung and disclose Samsung information to Mr.  
20 Karp and Rambus in 1997 and 1998, Rambus's patent claims were focused on Rambus's own  
21 proprietary RDRAM technology. Up until that time, moreover, Rambus's patent portfolio was not  
22 asserted against features of DRAMs made by Samsung. As a result of Mr. Steinberg's disclosures  
23 to Rambus, however, Rambus was able to draft new patent claims that Rambus now alleges are  
24 infringed by Samsung DRAM products. In fact, Mr. Steinberg has testified that he was the one  
25 who came up with the idea for Rambus's Strategic Patent Portfolio Project, which was designed to  
26 obtain patents that could be used as a part of a licensing and enforcement strategy against DRAM  
27 manufacturers, including Samsung. In undertaking the Strategic Patent Portfolio Project, Mr.

1 Steinberg aggressively pursued patent applications to cover DRAM technology. As a part of this  
2 Project, Rambus continued to reverse engineer Samsung products.

3 139. Rambus was aware that Mr. Steinberg was still employed as an attorney by  
4 Samsung when Rambus engaged his services. Rambus was further aware of the fiduciary capacity  
5 in which Mr. Steinberg worked for Samsung, and of the duties that Mr. Steinberg owed to  
6 Samsung. Mr. Steinberg's duties to Samsung included an obligation to disclose violations of those  
7 duties.

8 140. Mr. Steinberg remained silent and concealed from Samsung his work for  
9 Rambus in contravention of his on-going obligations with Samsung, including information about  
10 his dual employment with Samsung and Rambus. Rambus likewise mislead Samsung as to its true  
11 intentions regarding their strategic alliance, allowing Samsung to invest heavily in manufacturing,  
12 marketing, and otherwise promoting their joint projects in RDRAM while secretly reverse  
13 engineering Samsung parts for infringement lawsuits, making itself "battle ready" for a suit against  
14 Samsung, and secretly consulting with Mr. Steinberg against Samsung's interests.

15 141. Samsung justifiably relied on Mr. Steinberg faithfully fulfilling his duties  
16 owed to Samsung, including the obligation to disclose violations of those duties. Samsung further  
17 justifiably relied on Mr. Steinberg's silence as indication that he did not violate his duties.  
18 Samsung likewise relied upon the representations by Rambus that it was working with Samsung in  
19 a strategic alliance to their mutual benefit and Rambus's encouragement that Samsung continue to  
20 invest money and manpower in this strategic alliance.

21 142. Rambus was aware of Mr. Steinberg's failure to disclose his dual  
22 employment to Samsung, in contravention of his duties to Samsung. Nevertheless, Rambus  
23 secretly engaged Mr. Steinberg's services when Rambus was aware that Mr. Steinberg was still  
24 employed as an attorney by Samsung and facilitated Mr. Steinberg's silence on his dual  
25 employment and, upon information and belief, his use of information about Samsung's business  
26 and DRAM products in working for Rambus. Rambus likewise kept its litigation planning against  
27 Samsung and its retention of Mr. Steinberg secret from Samsung.

1           143. Rambus knew or should have known that hiring Mr. Steinberg while he was  
2 still employed by Samsung would be considered contrary to the purpose of maintaining a profitable  
3 business alliance between Rambus and Samsung. Nevertheless, Rambus concealed from Samsung  
4 that it had secretly engaged Mr. Steinberg's services when Rambus was aware that he was still  
5 employed as an attorney by Samsung and facilitated Mr. Steinberg's silence on his dual  
6 employment and, upon information and belief, his use of information about Samsung's business  
7 and DRAM products in working for Rambus.

8           144. Rambus, by its concealment, falsely represented to Samsung that it was still  
9 interested in faithfully remaining a business partner with Samsung in their profitable business  
10 alliance at a time when, as a result of its knowledge that Mr. Steinberg was breaching his fiduciary  
11 duties to Samsung at Rambus's request and on its behalf, and because Rambus sponsored false  
12 testimony, and upon information and belief continues to sponsor false testimony, as well as  
13 destruction of documents, to conceal this wrongdoing, Rambus had a duty to speak.

14           145. The existence of Mr. Steinberg's dual employment with Samsung and  
15 Rambus was publicly revealed for the first time during the trial of *Rambus v. Infineon*, in the U.S.  
16 District Court for the Eastern District of Virginia in 2005, and could not have been discovered by  
17 Samsung before that time. Specifically, heavily redacted legal invoices from Mr. Steinberg to  
18 Rambus dated in June and July of 1998, two months before Mr. Steinberg resigned from Samsung,  
19 were produced by Rambus for the very first time in connection with the *Infineon* unclean-hands  
20 trial in early 2005. Furthermore, Mr. Steinberg testified in a deposition introduced by video at the  
21 unclean-hands trial that he performed legal services for Rambus beginning in June 1998. These  
22 documents and facts were not discoverable by Samsung or anyone else outside of Rambus before  
23 2005, and would remain concealed today if Rambus had not included as entries on its *Infineon*  
24 privilege log two documents prepared by Mr. Steinberg in June and July of 1998. Indeed, Mr.  
25 Steinberg had previously falsely testified in 2001 and again in 2004 that he had *not* performed any  
26 legal work for Rambus prior to August 17, 1998, the date he resigned from Samsung. Mr.  
27 Steinberg's perjury was a specific act of fraud that concealed Rambus's aiding and abetting of Mr.  
28 Steinberg's breaches of his fiduciary duties to Samsung, its intentional interference with Mr.

1 Steinberg's employment contract with Samsung, and Rambus's unfair business practices. Rambus  
 2 and Mr. Steinberg have likewise testified in this Court that Mr. Steinberg's representation of  
 3 Rambus while employed by Samsung was limited to a single unrelated project one weekend in  
 4 early June 1998. However, documents produced by Rambus clearly imply this testimony is false as  
 5 they show meetings and/or interactions between Rambus and Mr. Steinberg while Mr. Steinberg  
 6 was employed by Samsung for business purposes at times other than this one weekend. Upon  
 7 information and belief, this testimony presented by Rambus and Mr. Steinberg as recently as 2006  
 8 in this Court is part of a continuing fraud and deception to cover up Rambus's and Mr. Steinberg's  
 9 wrongful acts.

10 **Rambus's Aiding and Abetting Neil Steinberg's**  
 11 **Breach of Contractual Duties Owed to Samsung**

12 146. During the Spring and Summer of 1998, Mr. Steinberg, in-house counsel for  
 13 Samsung, had a written employment contract with Samsung for a specific term, which permitted  
 14 Mr. Steinberg to work only for Samsung during the term of that contract unless Samsung gave him  
 15 permission otherwise. This contract also included specific obligations of nondisclosure and  
 16 confidentiality, in addition to those imposed ethically and by law on Mr. Steinberg through his  
 17 fiduciary capacity as an attorney. Specifically, the contract prohibited Mr. Steinberg from  
 18 disclosing "any processes, formulas, improvements, inventions, discoveries, trade secrets, or other  
 19 proprietary information" to any person without Samsung's prior written consent.

20 147. Rambus was aware that Mr. Steinberg was employed as in-house counsel for  
 21 Samsung under a written employment contract for a specific term. Rambus was further aware that  
 22 at the time Mr. Steinberg's employment began with Rambus, his written employment contract had  
 23 not been terminated and was still in effect. Also during this time, Rambus knew that Mr.  
 24 Steinberg's contract included nondisclosure clauses and restrictions on additional employment, and  
 25 that Samsung had not consented to (and was unaware of) Mr. Steinberg's employment by Rambus.

26 148. Nevertheless, contrary to Mr. Steinberg's express contractual obligations to  
 27 Samsung, Rambus employed Mr. Steinberg to perform work on behalf of Rambus. Upon  
 28 information and belief, at the request of Rambus Mr. Steinberg actively worked to help Rambus

1 plan patent prosecution strategies, including actually working on patent applications, patent  
2 enforcement strategies, document handling and retention strategies for use in litigation, and to take  
3 other measures to extract royalties from manufacturers of DRAMs, including Samsung, as outlined  
4 in paragraphs 131-138 above. Further, upon information and belief, Mr. Steinberg used  
5 information about Samsung's business and DRAM products in working for Rambus, as outlined in  
6 paragraphs 131-138 above, including but not limited to facts developed for the prosecution of the  
7 '956 patent and strategies for protection of Samsung's JEDEC-compliant products as partially  
8 implemented in the '956 patent, product roadmaps (plans for development of future products and  
9 plans for their release), and Samsung's own internal licensing discussions and internal litigation  
10 strategy discussions, while he was under contractual and fiduciary duties not to disclose such  
11 information about Samsung's business or use it contrary to Samsung's interests, regardless of  
12 whether such information was trade secret. As a result, Rambus intentionally interfered with the  
13 Steinberg-Samsung employment contract by hiring Mr. Steinberg in February of 1998.

14           149. Mr. Steinberg was obligated to disclose violations of his contractual duties to  
15 Samsung. Likewise Mr. Steinberg has continued in his testimony in later litigation, including his  
16 most recent testimony in this Court, to misrepresent his relationship and work for Rambus while  
17 employed by Samsung. Upon information and belief, Rambus has sponsored and promoted this  
18 false testimony.

19           150. Mr. Steinberg remained silent and concealed from Samsung his work for  
20 Rambus in contravention of his on-going obligations with Samsung, including the concealment of  
21 information about his dual employment with Samsung and Rambus.

22           151. Samsung justifiably relied on Mr. Steinberg faithfully fulfilling his duties  
23 owed to Samsung, including the obligation to disclose violations of those duties. Samsung further  
24 justifiably relied on Mr. Steinberg's silence as indication that he did not violate his duties.

25           152. Rambus was aware that Mr. Steinberg's duties to Samsung included the  
26 obligation to disclose violations of those duties. Nevertheless, Rambus secretly engaged Mr.  
27 Steinberg's services when Rambus was aware that Mr. Steinberg was still employed as an attorney  
28 by Samsung and facilitated Mr. Steinberg's silence on his dual employment and, upon information

1 and belief, his use of information about Samsung's business and DRAM products in working for  
2 Rambus.

3 153. Rambus knew or should have known that its intentional interference with the  
4 Steinberg-Samsung employment contract would be considered contrary to the purpose of  
5 maintaining a profitable business alliance between Rambus and Samsung. Nevertheless, Rambus  
6 concealed from Samsung that it had secretly interfered with the Steinberg-Samsung employment  
7 contract. Upon information and belief, Rambus continues to conceal the true nature of Mr.  
8 Steinberg's employment by asserting privilege over the work product Mr. Steinberg and Rambus  
9 admit he created, and presenting testimony as to the limited scope of Mr. Steinberg's work that is  
10 not consistent with documents showing additional business meetings between Rambus and Mr.  
11 Steinberg while Mr. Steinberg was employed by Samsung.

12 154. Rambus, by its concealment, falsely represented to Samsung that it was still  
13 interested in faithfully remaining a business partner with Samsung in their profitable business  
14 alliance at a time when, as a result of its knowledge that Mr. Steinberg was breaching his fiduciary  
15 duties to Samsung at Rambus's request and on its behalf, and because Rambus sponsored false  
16 testimony, and upon information and belief continues to sponsor false testimony, as well as  
17 destruction of documents, to conceal this wrongdoing, Rambus had a duty to speak. Rambus's  
18 intentional interference with Mr. Steinberg's contract with Samsung was publicly revealed for the  
19 first time during the trial of *Rambus v. Infineon*, in the U.S. District Court for the Eastern District of  
20 Virginia in 2005 and could not have been discovered by Samsung before that time. Specifically,  
21 heavily redacted legal invoices from Mr. Steinberg to Rambus dated in June and July of 1998, two  
22 months before Mr. Steinberg resigned from Samsung, were produced by Rambus for the very first  
23 time in connection with the *Infineon* unclean-hands trial in early 2005. Furthermore, Mr. Steinberg  
24 testified in a deposition introduced by video at the unclean-hands trial that he performed legal  
25 services for Rambus beginning in June 1998. These documents and facts were not discoverable by  
26 Samsung or anyone else outside of Rambus before 2005, and would remain concealed today if  
27 Rambus had not included as entries on its *Infineon* privilege log two documents prepared by Mr.  
28 Steinberg in June and July of 1998. Indeed, Mr. Steinberg had previously falsely testified in 2001

1 and again in 2004 that he had *not* performed any legal work for Rambus prior to August 17, 1998,  
 2 the date he resigned from Samsung. Mr. Steinberg's perjury was a specific act of fraud by both  
 3 Rambus and Mr. Steinberg that concealed Rambus's aiding and abetting of Mr. Steinberg's  
 4 breaches of his fiduciary duties to Samsung, its intentional interference with Mr. Steinberg's  
 5 employment contract with Samsung, and Rambus's unfair business practices. Rambus and Mr.  
 6 Steinberg have likewise testified in this Court that Mr. Steinberg's representation of Rambus while  
 7 employed by Samsung was limited to a single unrelated project one weekend in early June 1998.  
 8 However, documents produced by Rambus clearly imply this testimony is false as they show  
 9 meetings and/or interactions between Rambus and Mr. Steinberg while Mr. Steinberg was  
 10 employed by Samsung for business purposes at times other than this one weekend. Upon  
 11 information and belief, this testimony presented by Rambus and Mr. Steinberg as recently as 2006  
 12 in this Court is part of a continuing fraud and deception to cover up Rambus's and Mr. Steinberg's  
 13 wrongful acts.

14 **Rambus's Aiding and Abetting Neil Steinberg's**  
 15 **Breach of Fiduciary Duties Owed to Samsung, a Former Client**

16 155. Mr. Steinberg ended his employment with Samsung in August 1998.

17 156. Separate from his duties when employed at Samsung, after ending his  
 18 employment with Samsung, Mr. Steinberg owed Samsung those duties owed to a former client by a  
 19 lawyer, including the duty to not disclose information about Samsung's business or to use it  
 20 contrary to Samsung's interests, regardless of whether such information was trade secret, and the  
 21 duty to obtain informed consent before representing parties adverse to Samsung in matters  
 22 substantially related to those Mr. Steinberg worked on for Samsung.

23 157. Nevertheless, upon information and belief, Mr. Steinberg continued to  
 24 actively work to help Rambus plan patent prosecution strategies, including actually working on  
 25 patent applications, patent enforcement strategies, document handling and retention strategies for  
 26 use in litigation, and to take other measures to extract royalties from manufacturers of DRAMs,  
 27 including Samsung, as outlined in paragraphs 131-138 above. Further, upon information and  
 28 belief, Mr. Steinberg used information about Samsung's business and DRAM products in working



1 for Rambus, as outlined in paragraphs 131-138 above, including but not limited to his work on the  
2 '956 patent application, Samsung product roadmaps, Samsung licensing strategies and litigation  
3 strategies he had been part of while employed at Samsung, while he was under contractual and  
4 fiduciary duties not to disclose such information about Samsung's business or to use it contrary to  
5 Samsung's interests, regardless of whether such information was trade secret.

6 158. Mr. Steinberg worked for Rambus without first obtaining Samsung's  
7 informed consent.

8 159. Mr. Steinberg remained silent and concealed from Samsung all the facts and  
9 circumstances regarding his representation of Rambus in contravention of his on-going obligations  
10 with Samsung, including, on information and belief, information about his active work to help  
11 Rambus plan patent prosecution strategies, including actually working on patent applications,  
12 patent enforcement strategies, document handling and retention strategies for use in litigation, and  
13 to take other measures to extract royalties from manufacturers of DRAMs, including Samsung, as  
14 outlined in paragraphs 131-138 above. In addition, he failed to inform Samsung of, upon  
15 information and belief, his use of information about Samsung's business and DRAM products in  
16 working for Rambus, as outlined in paragraphs 131-138 above, while he was under contractual and  
17 fiduciary duties not to disclose such information about Samsung's business or use it contrary to  
18 Samsung's interests, regardless of whether such information was trade secret.

19 160. Rambus was aware that Mr. Steinberg was obligated to safeguard Samsung  
20 information and to obtain informed consent from Samsung before working on certain matters  
21 adverse to Samsung. Rambus was further aware of the fiduciary capacity in which Mr. Steinberg  
22 had worked for Samsung, and of the duties that Mr. Steinberg continued to owe to Samsung.

23 161. Mr. Steinberg was obligated to disclose violations of those duties to  
24 Samsung.

25 162. Mr. Steinberg remained silent and concealed from Samsung his work for  
26 Rambus in contravention of his on-going obligations with Samsung, as did Rambus.



1           163. Samsung justifiably relied on Mr. Steinberg faithfully fulfilling his duties  
2 owed to Samsung, including the obligation to disclose violations of those duties. Samsung further  
3 justifiably relied on Mr. Steinberg's silence as indication that he did not violate his duties.

4           164. Rambus was aware that Mr. Steinberg's duties to Samsung included the  
5 obligation to disclose violations of those duties. Nevertheless, with awareness of Mr. Steinberg's  
6 continuing fiduciary responsibilities to Samsung, Rambus secretly engaged Mr. Steinberg's  
7 services that, upon information and belief, made use of Samsung information and dealt with matters  
8 adverse to Samsung and facilitated Mr. Steinberg's silence on, upon information and belief, his use  
9 of information about Samsung's business and DRAM products in working for Rambus.

10           165. Rambus knew or should have known that allowing Mr. Steinberg to work on  
11 matters adverse to Samsung or that made use of Samsung information would be considered  
12 contrary to the purpose of maintaining a profitable business alliance between Rambus and  
13 Samsung. Nevertheless, Rambus concealed from Samsung that it had secretly engaged Mr.  
14 Steinberg's services that, upon information and belief, made use of Samsung information and dealt  
15 with matters adverse to Samsung and facilitated Mr. Steinberg's silence on, upon information and  
16 belief, his use of information about Samsung's business and DRAM products in working for  
17 Rambus. Upon information and belief, Rambus further sponsored false testimony by Mr. Steinberg  
18 in court proceedings to conceal the nature and extent of his relationship with Rambus.

19           166. Rambus, by its concealment, falsely represented to Samsung that it was still  
20 interested in faithfully remaining a business partner with Samsung in their profitable business  
21 alliance at a time when, as a result of its knowledge that Mr. Steinberg was breaching his fiduciary  
22 duties to Samsung at Rambus's request and on its behalf, and because Rambus sponsored false  
23 testimony, and upon information and belief continues to sponsor false testimony, as well as  
24 destruction of documents, to conceal this wrongdoing, Rambus had a duty to speak.

25           167. The full nature of Mr. Steinberg's employment with Rambus, including work  
26 done for Rambus that was adverse to Samsung's interests or that made use of information about  
27 Samsung's business, was publicly revealed for the first time during the trial of *Rambus v. Infineon*,  
28 in the U.S. District Court for the Eastern District of Virginia in 2005, and could not have been

1 discovered by Samsung before that time. Specifically, heavily redacted legal invoices from Mr.  
 2 Steinberg to Rambus dated in June of 1998, two months before Mr. Steinberg resigned from  
 3 Samsung, were produced by Rambus for the very first time in connection with the *Infineon*  
 4 unclean-hands trial in early 2005. Furthermore, Mr. Steinberg testified in a deposition introduced  
 5 by video at the unclean-hands trial that he performed legal services for Rambus beginning in June  
 6 1998. These documents and facts were not discoverable by Samsung or anyone else outside of  
 7 Rambus before 2005, and would remain concealed today if Rambus had not included as entries on  
 8 its *Infineon* privilege log two documents prepared by Mr. Steinberg in June and July of 1998.  
 9 Indeed, Mr. Steinberg had previously falsely testified in 2001 and again in 2004 that he had *not*  
 10 performed any legal work for Rambus prior to August 17, 1998, the date he resigned from  
 11 Samsung. Mr. Steinberg's perjury was a specific act of fraud that concealed Rambus's aiding and  
 12 abetting of Mr. Steinberg's breaches of his fiduciary duties to Samsung, its intentional interference  
 13 with Mr. Steinberg's employment contract with Samsung, and Rambus's unfair business practices.  
 14 Upon information and belief, Rambus and Mr. Steinberg have continued to misrepresent their  
 15 relationship in false testimony in court proceedings in 2006, where they presented evidence that the  
 16 Steinberg relationship with Rambus prior to his departure was limited to one project over one  
 17 weekend in June 1998 on a matter unrelated to Rambus's patents, when documents produced and  
 18 other evidence show that there were other contacts between Rambus and Samsung while Samsung  
 19 employed Mr. Steinberg.

20 **Rambus's Anticompetitive Patent Enforcement**  
 21 **Strategies and Intentional Spoliation of Evidence**

22 168. Rambus was organized to exploit the invention claimed by Mark Horowitz  
 23 and Michael Farmwald of a narrow, multiplexed bus, and a packet-based memory interface.

24 169. In 1990, Rambus filed an application for a patent on the Horowitz-Farmwald  
 25 claimed invention(s). Rambus believed that this application fully and comprehensively described  
 26 and claimed any and all inventions made by Horowitz and Farmwald.

27 170. Rambus implemented the Horowitz-Farmwald ideas in a specific interface  
 28 which it called Rambus DRAM, or "RDRAM."

1           171. Rambus's original and preferred objective was to establish RDRAM as the  
2 commodity DRAM interface.

3           172. To this end, Rambus began as early as 1991 to actively market RDRAM to  
4 the DRAM industry including DRAM manufacturers, PC enablers including Intel, and industrial  
5 DRAM users.

6           173. From the beginning of its RDRAM marketing efforts, Rambus licensed and  
7 offered to license the whole of its interface technology, including any future patents. Prospective  
8 licensees reasonably understood that they were bargaining for a license relating to any existing or  
9 future Rambus patents.

10           174. In marketing RDRAM to the DRAM industry, Rambus described the  
11 Rambus interface extensively. Such descriptions invariably emphasized the unique and allegedly  
12 "revolutionary" characteristics of the Horowitz-Farmwald ideas, namely the single narrow and  
13 multiplexed bus and the packet based communication protocol.

14           175. In marketing RDRAM to the DRAM industry, Rambus frequently and  
15 typically contrasted RDRAM with competitive interfaces, including the conventional DRAM  
16 interfaces then in common use, and with developing DRAM interfaces, including the SDRAM  
17 interfaces being standardized at JEDEC and the SyncLink interface.

18           176. During the 1990's, Rambus participated actively in industry meetings on  
19 standards for SDRAMs and DDR SDRAMs at the Joint Electron Device Engineering Council  
20 ("JEDEC"). Rambus improperly used information it obtained as a result of its membership in  
21 JEDEC to secure additional patents and claims. Rambus's use of this information was in violation  
22 of policies applicable to all JEDEC members. Further, Rambus's failure to disclose to other  
23 members of JEDEC that it had taken information from JEDEC to craft its patent claims, only to  
24 seek to enforce its claims against JEDEC-compliant products many years after JEDEC members  
25 had invested heavily in the technology without notice of Rambus's conduct estops Rambus from  
26 enforcing its patents against JEDEC members.

27           177. By February 1998, Rambus decided to litigate in order to license its  
28 purported SDRAM and DDR SDRAM technology to the DRAM industry, as a means of

1 eliminating or disadvantaging such alternatives to Rambus technology. By the Spring of 1998,  
2 before it commenced its litigation strategy, Rambus was actively seeking to improve its SDRAM  
3 and DDR SDRAM patent portfolio.

4 178. Central to this litigation strategy was the repeated, company-wide,  
5 destruction of relevant documents. Rambus intentionally destroyed millions of pages of documents  
6 that it knew would be relevant to its lawsuits against the users of competing PC DRAM interface  
7 technologies, including this lawsuit against Samsung and others. This strategy also included  
8 recruiting Samsung employees to work for Rambus as employees or attorneys.

9 179. During meetings held in February 1998, Rambus and its attorneys developed  
10 a multi-step litigation strategy against DRAM manufacturers that included making Rambus “battle  
11 ready” prior to litigation. The strategy involved, among other things, destroying millions of  
12 relevant documents and attempting to mask that wanton destruction under the guise of a document  
13 “retention” policy.

14 180. At the time this strategy was hatched, Rambus expressly contemplated suing  
15 DRAM manufacturers on a number of theories, including breach of contract claims against those  
16 manufacturers who were RDRAM licensees, patent-infringement claims against those who relied  
17 on competing PC DRAM interface technology, and an action for collusion and/or unfair  
18 competition against the DRAM suppliers.

19 181. Rambus’s stated goals for the third quarter of 1998 included implementing  
20 its document destruction action plan. This plan included a staff training event and a “summer  
21 housecleaning.”

22 182. In September 1998, Rambus commenced its first known “shred party.”  
23 Rambus hired a shredding service to come to Rambus’s corporate headquarters in Mountain View,  
24 California on September 3, 1998. In accordance with Rambus’s litigation strategy, Rambus  
25 distributed burlap bags to all of its employees a week in advance of the shredding to enable those  
26 employees to identify and collect documents to be shredded. During this first shred party, Rambus  
27 began to “cleanse” its patent prosecution and related files by destroying documents related to, at  
28 least, patents that Rambus was planning to enforce against the DRAM industry. The destroyed

1 documents related to, among others, patents to which other Rambus patents claim priority,  
2 including patents that issued after the first shred party. Following “Shred Day,” all Rambus  
3 employees were invited to a party at 5:00 p.m. on September 3, 1998 to celebrate completion of the  
4 document destruction.

5 183. All told, Rambus employees shredded thousands of pages of documents on  
6 Shred Day 1998. In fact, so many documents were bagged for shredding that the shredding truck  
7 was filled to capacity and had to return another day to finish the job. By the end of the shredding,  
8 Rambus had disposed of over 185 burlap sacks full of documents, and 60 banker’s boxes full of  
9 documents. Upon information and belief, the destruction of documents deliberately included files  
10 and papers that would show the projects Mr. Steinberg worked on for Rambus while employed by  
11 Samsung, and misuse of Samsung’s information about Samsung’s products, its ’956 patent  
12 application, patent strategies and litigation and licensing strategies, as well as contacts between  
13 Rambus and Mr. Steinberg while he was employed at Samsung.

14 184. During April 1999, Rambus had its patent attorneys “cleanse” their files.

15 185. In 1999, Rambus added further detail to its anticompetitive strategy.  
16 Rambus’s 1999 litigation strategy expressly anticipated and planned for a potential “Nuclear  
17 Winter Scenario” in the event Intel was to decide to move away from RDRAM to an alternative  
18 technology, such as DDR SDRAM, SLDRAM, or some other PC DRAM interface technology that  
19 Rambus feared might have been created by the DRAM manufacturers. Rambus’s planned response  
20 was to discipline Intel “by cutting off” Intel’s access to alternative technology, thus “threatening  
21 Intel’s current and future microprocessor based products.”

22 186. As a central part of its litigation plan, Rambus contemplated filing  
23 complaints against various DRAM manufacturers. The claims Rambus expressly contemplated in  
24 1999 included: (i) patent infringement claims against users of alternative technologies to RDRAM  
25 technology; (ii) breach of contract claims “based on cancellation of RDRAM production;” (iii)  
26 fraud based on a theory that the DRAM companies never intended to manufacture RDRAM, and  
27 (iv) the making of statements about Rambus that the DRAM companies knew to be untrue; (v)  
28 unfair competition; (vi) antitrust violations; and (vii) any other claims that might be brought based

1 on a theory that the DRAM manufacturers set out to destroy Rambus through their actions. These  
2 claims planned in 1999 include the very claims Rambus has alleged in its Complaint in this action.

3 187. In furtherance of Rambus's "nuclear winter" litigation scenario, Rambus set  
4 a series of "IP Goals" for 1999. For the third quarter of 1999, the "Licensing/Litigation Readiness  
5 Goals" included the following verbatim bullet-point items:

6 "E. Prepare litigation strategy against 1 of 3 manufacturers (re: 3D)

7 "F. Ready for Litigation with 30 days notice

8 "G. Organize 1999 shredding party at Rambus"

9  
10 188. During August 1999, Rambus commenced its second known "shred party."  
11 During this second shred party, Rambus again "cleansed" its patent prosecution and related files by  
12 destroying additional documents related to, at least, patents that Rambus was planning to enforce or  
13 was litigating against the DRAM industry. The destroyed documents related to, among others,  
14 patents to which other Rambus patents claim priority, including patents that issued after the second  
15 shred party. All told, an additional 150 burlap bags filled with documents were destroyed - the  
16 equivalent of 188 banker's boxes or almost a half-a-million pages. Upon information and belief,  
17 the destruction of documents deliberately included files and papers that would show the projects  
18 Mr. Steinberg worked on for Rambus while employed by Samsung, and misuse of Samsung's  
19 information about Samsung's products, its '956 patent application, patent strategies and litigation  
20 and licensing strategies, as well as contacts between Rambus and Mr. Steinberg while he was  
21 employed at Samsung.

22 189. During the Spring of 2000, Rambus was notified by its outside counsel that it  
23 had a duty to preserve all documents related to its patents and/or the litigation against DRAM  
24 manufacturers.

25 190. During June 2000 and after its litigation with Hitachi settled, Rambus again  
26 asked its patent attorneys to destroy documents.

27 191. During December 2000, while Rambus was actively litigating against  
28 numerous companies on antitrust, fraud, and patent claims, Rambus commenced its third known

1 “shred party.” During this third shred party, Rambus again “cleansed” its patent prosecution and  
 2 related files by destroying additional documents related to, at least, patents that Rambus was  
 3 enforcing and litigating against the DRAM industry. The destroyed documents related to, among  
 4 others, patents to which other Rambus patents claim priority, including patents that issued after the  
 5 third shred party. Shred Day 2000 turned out to be the largest Shred Day of them all. All told,  
 6 Rambus destroyed over 575 banker’s boxes full of documents – one-and-a-half million pages – on  
 7 Shred Day 2000. Although Rambus was then litigating numerous actions, Rambus employees were  
 8 given no instructions to retain documents related to the litigations. To ensure that its strategy to  
 9 dispose of critical evidence worked, Rambus did not maintain any record of which documents it  
 10 destroyed. Upon information and belief, the destruction of documents deliberately included files  
 11 and papers that would show the parties’ interpretation of the 2000 SDR/DDR license between  
 12 Samsung and Rambus consistent with Samsung’s claims in this case and contrary to positions  
 13 Rambus has taken in this lawsuit, deliberate efforts to deceive Samsung during the strategic alliance  
 14 between Samsung and Rambus, misuse of information from the projects Mr. Steinberg worked on  
 15 for Rambus while employed by Samsung, and misuse of Samsung’s information about Samsung’s  
 16 products, its ’956 patent application, patent strategies and litigation and licensing strategies, as well  
 17 as contacts between Rambus and Mr. Steinberg while he was employed at Samsung.

18           192. Samsung could not have discovered Rambus’s destruction of documents  
 19 until it was revealed publicly in a trial in *Rambus v. Infineon* in the Eastern District of Virginia in  
 20 February 2005. Specifically, voluminous Rambus documents produced for the very first time in  
 21 connection with the *Infineon* unclean-hands trial in early 2005 catalogued Rambus’s adoption of a  
 22 document retention policy in early 1998, its massive destruction of documents during at least three  
 23 separate company-wide “Shred Days,” and its instructions to outside patent counsel to destroy  
 24 numerous documents from his Rambus patent files – documents that a patent-infringement  
 25 defendant might use to defend against Rambus’s infringement claims. These documents and facts  
 26 were not discoverable by Samsung or anyone else outside of Rambus before 2005, and would  
 27 remain concealed today if the *Infineon* court had not broadly pierced Rambus’s attorney-client  
 28 privilege under the crime-fraud exception during preparations for the 2005 unclean-hands trial.



1           193. Rambus's document destruction covered all major categories of documents  
2 generated in the ordinary course of Rambus's business, such as e-mail communications, notes of  
3 contract negotiations, and drafts and other information useful in ascertaining the truth and in testing  
4 the validity of the positions taken by Rambus in this and its other lawsuits. The shredding included  
5 the destruction of evidence that related to, among other things:

- 6           a. Rambus's prosecution of its patents,
- 7           b. the relationship of Rambus's patent applications and pending claims to industry  
8 standards,
- 9           c. presentations to Rambus's board of directors regarding intellectual property,
- 10           d. potentially damaging or invalidating prior art related to patents asserted against  
11 DRAM manufacturers, including Samsung, as part of Rambus's litigation strategy,
- 12           e. Rambus's draft license agreements and documents related to the negotiations for  
13 such license agreements, and
- 14           f. on information and belief, other documents supporting Samsung's positions and  
15 affirmative defenses in this case, and the facts alleged by Samsung in its Counterclaims, including  
16 but not limited to the interpretation and negotiation of the 2000 SDR/DDR license between  
17 Samsung and Rambus, Rambus's deception of Samsung during their strategic partnership (by  
18 planning infringement litigation against Samsung while promoting their relationship), and the  
19 nature and extent of Mr. Steinberg's breach of fiduciary duties while employed by Samsung and  
20 after his employment by Samsung.

21  
22           194. Rambus's wholesale destruction of these and other categories of documents  
23 was intended to and has prejudiced Samsung in this lawsuit, as well as other DRAM manufacturers  
24 and the end-users of DRAM technology. Samsung can only speculate as to what documents were  
25 destroyed because Rambus kept no log of what was shredded. Nevertheless, based on what is  
26 revealed in those documents that *were* retained, Samsung has every reason to believe the destroyed  
27  
28



1 documents contained information that would further bring to light the wrongs by Rambus that are  
2 alleged in these Counterclaims.

3 195. Rambus's vice president of engineering testified under oath that he was  
4 ordered to purge his files at least in part because "such materials are discoverable in subsequent  
5 litigations." A lawyer in Rambus's in-house legal department testified that one of the understood  
6 reasons behind the "Shred Days" was that "some of that stuff is discoverable."

7 196. While attempting to make itself "battle ready," Rambus launched its  
8 litigation campaign against the DRAM manufacturers, with numerous patent suits against multiple  
9 DRAM manufacturers in various U.S. federal courts, as well as patent courts in Italy, German,  
10 France, and the United Kingdom.

11 197. In the course of its lawsuits against the DRAM manufacturers, Rambus  
12 engaged in further litigation misconduct, including permitting its executives, attorneys, and  
13 employees to offer false or misleading testimony in multiple depositions about Rambus's  
14 destruction of documents. In one such action brought by Rambus against Infineon in the Eastern  
15 District of Virginia, the Honorable Robert Payne found Rambus's spoliation and perjury so  
16 egregious that he dismissed summarily Rambus's claims against Infineon. Having been presented  
17 with evidence of Rambus's (and its lawyers') misconduct, Judge Payne could only remark "Why  
18 are all these people lying?" Judge Payne felt compelled to warn all involved that their destruction  
19 of evidence could result in jail terms. Rambus sponsored false testimony by Mr. Steinberg and its  
20 executives in litigation, only conceding some of the testimony was false as recently as 2006, while  
21 continuing to present testimony inconsistent with its own records.

22 198. Rambus knew or should have known that its actions in implementing its  
23 strategy to exploit its anticompetitive agreements and litigation scheme against the DRAM  
24 manufacturers, including Samsung, would be considered contrary to the purpose of maintaining a  
25 profitable business alliance between Rambus and Samsung. Nevertheless, Rambus engaged in such  
26 actions.

27 199. Rambus, by its concealment, falsely represented to Samsung that it was still  
28 interested in faithfully remaining a business partner with Samsung in their profitable business

1 alliance at a time when, as a result of its knowledge that Mr. Steinberg was breaching his fiduciary  
2 duties to Samsung at Rambus's request and on its behalf, and because Rambus sponsored false  
3 testimony, and upon information and belief continues to sponsor false testimony, as well as  
4 destruction of documents, to conceal this wrongdoing, Rambus had a duty to speak.

5           200. Rambus's destruction of documents in anticipation of litigation with  
6 Samsung, its unfair employment of Neil Steinberg, and the full nature and extent of the unfair  
7 conduct by Rambus, were publicly revealed for the first time during the trial of *Rambus v. Infineon*,  
8 in the U.S. District Court for the Eastern District of Virginia in 2005, and could not have been  
9 discovered by Samsung before that time. Specifically, voluminous Rambus documents produced  
10 for the very first time in connection with the *Infineon* unclean-hands trial in early 2005 catalogued  
11 Rambus's adoption of a document retention policy in early 1998, its massive destruction of  
12 documents during at least three separate company-wide "Shred Days," and its instructions to  
13 outside patent counsel to destroy numerous documents from his Rambus patent files – documents  
14 that a patent-infringement defendant might use to defend against Rambus's infringement claims.  
15 These documents and facts were not discoverable by Samsung or anyone else outside of Rambus  
16 before 2005, and would remain concealed today if the *Infineon* court had not broadly pierced  
17 Rambus's attorney-client privilege under the crime-fraud exception during preparations for the  
18 unclean-hands trial. In addition, heavily redacted legal invoices from Mr. Steinberg to Rambus  
19 dated in June and July of 1998, two months before Mr. Steinberg resigned from Samsung, were  
20 produced by Rambus for the very first time in connection with the *Infineon* unclean-hands trial in  
21 early 2005. Furthermore, Mr. Steinberg testified in a deposition introduced by video at the  
22 unclean-hands trial that he performed legal services for Rambus beginning in June 1998. These  
23 documents and facts were not discoverable by Samsung or anyone else outside of Rambus before  
24 2005, and would remain concealed today if Rambus had not included as entries on its *Infineon*  
25 privilege log two documents prepared by Mr. Steinberg in June and July of 1998. Indeed, Mr.  
26 Steinberg had previously falsely testified in 2001 and again in 2004 that he had *not* performed any  
27 legal work for Rambus prior to August 17, 1998, the date he resigned from Samsung. Mr.  
28 Steinberg's perjury was a specific act of fraud that concealed Rambus's aiding and abetting of Mr.

1 Steinberg's breaches of his fiduciary duties to Samsung, its intentional interference with Mr.  
 2 Steinberg's employment contract with Samsung, and Rambus's unfair business practices. Upon  
 3 information and belief, Mr. Steinberg and Rambus continue to conceal the true extent and nature of  
 4 their relationship by assertion of privilege over work Mr. Steinberg did for Rambus while employed  
 5 by Samsung, and by testifying to the limited engagement of one weekend in June, which is  
 6 inconsistent with records produced by Rambus (which appear incomplete).

7 201. Rambus continues today its strategy to exploit its anticompetitive agreements  
 8 and litigation scheme in an attempt to have "[o]ur standards dominate the DRAM interface market"  
 9 and "[c]ollect royalties on all DRAM and controllers forever."

10 **Evidence Revealed for the First Time During the *Infineon* Unclean-Hands Trial in 2005**

11  
 12 202. As described above, the documents and facts that reveal Rambus's conduct  
 13 upon which Samsung's counterclaims are based were revealed publicly for the first time during the  
 14 2005 unclean-hands trial between Rambus and Infineon in the Eastern District of Virginia, and  
 15 could not have been discovered by Samsung before that time. More specifically, in addition to  
 16 Samsung's factual allegations above, which are based almost entirely on information first learned  
 17 in 2005, at least the following facts first came to light during the 2005 *Infineon* trial and were  
 18 included in the findings of fact in the Eastern District of Virginia court's exceptional-case opinion  
 19 in *Samsung v. Rambus*.<sup>4</sup> Samsung was not on notice that Mr. Steinberg had acted adversely to  
 20 Samsung's interest until it knew of these facts because, prior to that time, Samsung was not aware  
 21 of Rambus's long-standing and coordinated plan to extract royalties from the DRAM industry, and  
 22 therefore could not have known the improper and integral role that Mr. Steinberg's employment by  
 23 Rambus played therein:

24 **Facts related to Rambus's strategy to extract royalties from DRAM manufacturers and its**  
 25 **spoliation of evidence in anticipation of litigation with those manufacturers:**

- 26 • In October 1997, Rambus hired Joel Karp, formerly employed by Samsung, to  
 27 implement its plan to secure royalties from DRAM manufacturers whose

28 <sup>4</sup> A copy of the opinion is attached as Exhibit B.

products Rambus considered to infringe its patents and tread on its technology;

- By February and March of 1998, Rambus believed that a number of DRAM manufacturers, some of which held Rambus licenses for RDRAMs, and others of which did not, were making SDR and DDR DRAMs using Rambus technology. Rambus intended to do what was necessary to secure royalties for the use of its inventions;
- Rambus's litigation plans were sufficiently concrete, even by the spring of 1998, that it had identified potential litigation targets by industry type (DRAM manufacturers) and by name, and it had identified potential venues in which to prosecute the litigation and the theories of liability (breach of contract or patent infringement) to assert in it. In fact, Rambus had identified, as components of aggressive readiness, the need to prepare a discovery database and the need to select experts. And, as the Rambus board was told, the litigation strategy involved the near term actions of establishing a document retention policy and cleansing the patent prosecution files;
- Rambus reverse engineered Samsung parts for litigation in 1998;
- Rambus consulted with Mr. Steinberg while he was employed by Samsung in 1998 to prepare for litigation;
- In a section entitled "NEGOTIATION TACTICS," Rambus's patent enforcement plan for 1999 suggested meetings at which litigation targets would be shown how they infringe by using claim charts. The proposed royalties would be high (5% to 10%), if settlement was not thought desirable in a particular case, or low (1% to 2%), if settlement was desired by Rambus;
- Rambus's board of directors was informed in 1998 that, of 13 potential litigation adversaries, those achieving the highest score on the legal matrix were, in order, Hitachi, NEC, Samsung, Fujitsu, and Toshiba, while those achieving the highest score on the business matrix were, in order, Micron, Hitachi, A&D, Hyundai (now Hynix), and Samsung. The overall combined weighting (60% for legal factors, 40% for the business factors) produced the following overall rankings, in order: Hitachi, Samsung, Hyundai (now Hynix), NEC, and Micron;
- The licensing component of Rambus's patent enforcement strategy called for such high royalties that Rambus expected to be in litigation soon after seeking those royalties. Indeed, the company expected that litigation would be necessary to establish both its intellectual property rights and its royalty rates. Rambus's official business records demonstrate that the document retention program was an integral component of this litigation strategy;
- By the time Rambus implemented its document destruction policy on Shred Day in September 1998, it had identified the most likely and attractive litigation targets, and had settled on a number of possible legal theories to press against specific targets, depending upon whether the target was already a licensee. Rambus had also begun its reverse engineering efforts and planned to develop claim charts shortly thereafter. Additionally, Rambus had selected three fora it thought would be most advantageous to it. All of

these efforts on the part of Rambus were components of its overarching Licensing and Litigation Strategy.

**Facts related to Rambus's document retention policy:**

- Beginning in early 1998, Rambus developed a document retention policy;
- Anthony Diepenbrock, formerly the in-house patent lawyer at Rambus, testified that one reason for implementing a document retention policy was concern about documents being discoverable in litigation. Mr. Diepenbrock recalled that a particular focus of that concern was email communications. Allen Roberts, Rambus's Vice President of Engineering, testified that one of the reasons given by Karp for purging files was that they were discoverable in litigation;
- Joel Karp and outside litigation counsel Dan Johnson gave a presentation to Rambus's managerial staff on July 22, 1998. That presentation specified that special care should be taken with email and electronic documents because, *inter alia*, email communications 'are generally less formal and thoughtful than written correspondence.' Mr. Johnson explained that emails should be treated like written documents for discovery or destruction purposes.

**Facts relating to Rambus's document destruction:**

- On September 3, 1998, burlap bags were handed out to every Rambus employee and documents were placed in the bags and delivered to an outside contractor for shredding which incidentally occurred on site. On Shred Day and the next day, Rambus destroyed the equivalent of 291 boxes (or 757,531 pages) of documents;
- In April 1999, Rambus, through Joel Karp, instructed its outside patent counsel, Lester Vincent of the Blakely Sokoloff firm, to comply with Rambus's document retention policy and to "clean out all the Rambus files that had issued." According to Mr. Vincent, by April 19, 1999, he had followed Mr. Karp's April 5th request and cleaned 11 of 49 issued patent files at Blakely Sokoloff in accord with the Rambus document retention policy. At that time, Mr. Karp asked Mr. Vincent to speed the process up and a secretary was assigned full time to file clearance;
- A second shredding event occurred on August 26, 1999. On this occasion, the company's chief executive officer, Geoff Tate, advised that he was aware of, but would not be attending the shredding party. On Shred Day 1999 (August 26, 1999), Rambus destroyed 188 boxes (or 487,688 pages) of documents;
- Lester Vincent, acting on his own, stopped "cleaning" the patent prosecution files in his office when he learned that Hitachi had been sued. No one at Rambus gave him that instruction. One June 22, 2000, Mr. Vincent learned, by email from Mr. Karp, that the Hitachi litigation had settled. The next day, June 23, 2000, Mr. Vincent resumed cleaning out his Rambus prosecution files in accord with the previous instructions from Mr. Karp to act expeditiously in completing that task;

- 1 • Also on June 23, 2000, Rambus first asserted the '804 patent against  
2 Infineon by way of a letter from Mr. Steinberg to Infineon's vice president,  
3 Dr. Andreas von Zitzewitz. On that day, Mr. Vincent cleaned out his '804  
4 prosecution file;
- 5 • On July 17, 2000, approximately one month after having first asserted the  
6 '804 patent against Infineon and six months after suing Hitachi and  
7 approximately three weeks before filing the action against Infineon, Mr.  
8 Steinberg issued a memorandum to all Rambus executives that was entitled  
9 "Reminder of Document Destruction Policy re: Contracts." Mr. Steinberg  
10 instructed the Rambus executives to destroy draft contracts and materials  
11 used during negotiations that are not part of the final contract. According to  
12 Mr. Steinberg, that pertained to "all licenses." At the time that Mr. Steinberg  
13 issued the July 17 destruction order, Rambus had negotiated license contracts  
14 with at least 14 different DRAM manufacturers, at least seven of which were  
15 on the litigation target list;
- 16 • In December 2000, some three and a half months after filing the action  
17 against Infineon, a company-wide document destruction plan was conducted  
18 in conjunction with a transfer of offices from one location to another. At that  
19 time, during the pendency of *Rambus v. Infineon* and in the midst of  
20 discovery in that case, Rambus destroyed 575 boxes (or 1,495,575 pages) of  
21 documents;
- 22 • Rambus instructed its outside patent counsel, Lester Vincent, to purge the  
23 patent prosecution files so as to make them conform to the file wrapper and  
24 thereby to eliminate much information that typically is useful in patent  
25 litigation in addressing validity and infringement issues as well as the  
26 conduct of the applicant before the PTO;
- 27 • Rambus also destroyed email archives and other electronic files. Many of  
28 Rambus's Macintosh backup tapes were destroyed in the implementation of  
the document retention policy. By virtue of the document retention policy,  
the backup tapes for emails were destroyed every three months from its  
inception in September 1998 forward;
- Prior art documents were discarded by Rambus. Mr. Steinberg admitted that,  
in 1999, he threw away prior art documents on which he had made  
substantive notations.

**Facts relating to Neil Steinberg's employment at Rambus and his involvement in Rambus's plan to extract royalties from DRAM manufacturers:**

- In the middle of 1998, Mr. Karp arranged to retain, as outside counsel for Rambus, Neil Steinberg. At the time he began to represent Rambus in mid-1998, Mr. Steinberg testifies that his responsibility was 'licensing and preparation for litigation, and of course, prosecution . . . related to Rambus technology and Rambus patents.' According to Mr. Steinberg, the 'licensing and preparation for litigation' to which he referred was related to Rambus's patents that were thought to relate to third parties who used RDRAMs and third parties who used SDRAMs and DDR-SDRAMs;



- On October 1, 1998, Mr. Steinberg gave a presentation to Rambus executives which, on Rambus's privilege log, is identified as "Patent Litigation Strategy Update." This presentation helps to explain why Rambus did not actually implement its Licensing/Litigation Strategy until late 1999. Although Rambus had filed the '898 application in 1990, its progress in securing patents was slowed because the PTO required Rambus to reconfigure its applications and that led to the necessity to file continuation and divisional applications. Also, in late 1991, Rambus joined JEDEC and, as reflected in the company's 1992 business plan, learned that JEDEC was formulating a standard applicable to SDRAMs. The process of developing the standard was a slow one. As Rambus attended the meetings, its representatives, Messrs. Crisp and Garrett, obtained information that was used to improve existing applications or to file new ones in a deliberate effort to cover the evolving SDRAM standard. Further, Mr. Steinberg ascertained that some of the pending applications might not be effective in covering SDRAM products to be made in compliance with JEDEC standard. Therefore, he took over the patent prosecution of a number of patents in 1998 with a view to strengthening the Rambus portfolio as to SDRAM and DDR-DRAM products;

- Mr. Steinberg prepared a strategy update for October 1998. On the page entitled "Strategy Update 1098-1," Mr. Steinberg advised the Rambus executives:

- DO NOT ROCK THE DIRECT BOAT
- We should not assert patents against Direct partners until ramp reaches a point of no return (TBD)
- Probably not until Q1/00

Testimony established that the term "Direct" means the RDRAM and thus, in effect, Mr. Steinberg advised the Rambus executives not to assert Rambus's patents against DRAM manufacturers who had licenses for the RDRAM technology until those manufacturers had "reached a point of no return." In other words, he advised that Rambus should forestall an assertion of its patent rights against DRAM manufacturers with whom it had licenses until those manufacturers had become committed to use of RDRAM technology. At the same time, Mr. Steinberg posed a significant question:

- However, Big Question Is--WHAT'S THE RUSH?
- What is compelling business reason? I can't think of any
- Let's not snatch defeat from the jaws of victory

- The next slide, Strategy Update, 10/98-2, specifies that Rambus should give top priority to strengthening its portfolio by filing continuation cases based on the '898 filing in 1990, the objective of which was to "cover SDRAM, DDR, SLDRAM, any and all forms of synchronous memory (static and dynamic)." To that end, a new series of filings were recommended. Meanwhile, Rambus was proceeding with reverse engineering efforts and Mr. Steinberg advised that the company should "Continue In Stealth Mode During '99."



- 1                     • The following slide, Strategy Update, 10/98-3, suggested to the Rambus  
2                     board a way to implement the point made on slide 2. Specifically, all  
3                     prosecutions based on the '898 filing were then to be given to Mr. Steinberg,  
4                     who would add eight to twelve new continuation cases and continue with the  
5                     five then being prosecuted by the Blakely Sokoloff law firm. It was Mr.  
6                     Steinberg's expectation that all of the cases would issue within 12 to 18  
7                     months from filing. Thus, he suggested that the strategic portfolio of  
8                     Rambus patents would be ready to present to the industry during calendar  
9                     year 2000. He advised also that all reverse engineering should be completed  
10                    in advance of that time. The purpose of strengthening the strategic  
11                    portfolios was also outlined by Mr. Steinberg. In his view, it "Should Result  
12                    In Quick Settlements By Several Companies;"
- 13                   • In June 1999, Mr. Steinberg made a presentation to Rambus executives.  
14                   According to a Rambus privilege log, the topics were intellectual property  
15                   and litigation strategy. In a section of the presentation entitled "KR99.5  
16                   Update for IP," the executives were given a status report. ("KR" stands for  
17                   "key results" and "99.5" stands for "half way through 1999"). Under the  
18                   category "Current: IP ACQUISITION AND PROTECTION," Mr. Steinberg  
19                   advised that more than ten continuation cases based on the 1990 filing (the  
20                   '898 application) with claims directed to SDRAM, DDR SDRAM, and SLR-  
21                   DRAM had been filed. Mr. Steinberg further announced as an objective, the  
22                   commencement of license negotiation with at least one company with the  
23                   purpose of starting the "clock for calculation of damages by Q4/99-Q1/00."  
24                   Mr. Steinberg then proposed amended goals, the second of which was to  
25                   begin license negotiations with one company, thereby starting the clock for  
26                   calculation of damages by Q4/99, and then to begin license negotiations with  
27                   two additional companies during Q1/00. Finally, he advised that the  
28                   amended goal would include the choosing of "one company to litigate with  
during Q1/00" and to "[c]ommence litigation during Q2/00 upon ex/board  
approval." Mr. Steinberg also informed the Rambus executives of the  
selected "SDRAM Targets" for whom infringement cases would be prepared  
in "Q4'99." Those targets included Hitachi and Infineon, against whom  
Rambus actually filed patent litigation actions in January 1999 and August  
2000, respectively. It was the stated objective to select the first target by  
"early Q4'99" and the second and third target by "mid-Q4'99." The factors  
to be considered in selecting the target included the opponent's "Licensing  
and Litigation Capabilities," and the "Economic Impact of Licensing and  
Litigation" in the United States, Europe, and Korea.
- Thus, by June 1999, the scheduled slowdown proposed by Mr. Steinberg in  
October 1998 went by the wayside and planning for litigation resumed  
apace. Indeed, in June 1999, Mr. Karp and Mr. Steinberg were preparing  
Rambus's intellectual property department's third quarter goals. A first cut of  
those goals was prepared on June 27, 1999. The third section of the  
"IPQ3'99 Goals" was addressed to the company's "Licensing/Litigation  
Readiness." The goals included the preparation of licensing positions against  
three manufacturers (item 3D), the preparation of a litigation strategy against  
one of the three manufacturers thusly identified (item 3E), to be ready for

litigation with 30 days notice (item 3F), and to “organize 1999 shredding party at Rambus” (item 3G).

**COUNT I (BREACH OF SECTION 3.8 OF THE SDR/DDR LICENSE)**

203. SEC and SEA reallege and incorporate by reference Paragraphs 1- 204 above as though fully set forth herein.

204. Section 3.8 of the SDR/DDR License requires Rambus to notify SEC of any lower effective royalty rate paid by any third party for specific products defined in the SDR/DDR License.

205. Rambus and Infineon entered into a license agreement during the Spring of 2005 (the “Rambus/Infineon License”). On information and belief, the Rambus/Infineon License provided for an effective royalty rate that was lower than that being paid by SEC under the SDR/DDR License.

206. Rambus failed to notify SEC of the lower effective royalty rate agreed to be paid by Infineon as provided for in the Rambus/Infineon License.

207. Rambus breached Section 3.8 of the SDR/DDR License Agreement by failing to notify SEC of the lower effective royalty rate provided for in the Rambus/Infineon License.

208. Section 3.8 of the SDR/DDR License required Rambus to adjust the royalty rate paid by SEC to match any lower effective royalty rate paid by a third party.

209. Rambus failed to adjust SEC’s royalty rate following the execution of the Rambus/Infineon License.

210. Rambus breached Section 3.8 of the SDR/DDR License Agreement by failing to adjust SEC’s royalty rate based upon the lower effective royalty rate provided for in the Rambus/Infineon License.

211. All conditions precedent have been met.

212. SEC has suffered damages as a result of the breach by Rambus of Section 3.8 of the SDR/DDR License.

**COUNT II (BREACH OF SECTION 8.5 OF THE SDR/DDR LICENSE)**

213. SEC and SEA reallege and incorporate by reference Paragraphs 1-212 above as though fully set forth herein.

214. Section 8.5 of the SDR/DDR License provides that SEC and Rambus will negotiate an extension or renewal of the SDR/DDR License in good faith.

215. Rambus failed to provide notice of certain terms of the Rambus/Infineon License as required under Section 3.8 of the SDR/DDR License, thereby precluding good faith negotiations for the extension or renewal of the SDR/DDR License.

216. Rambus breached Section 8.5 of the SDR/DDR License by failing to provide SEC with notice of those certain terms of the Rambus/Infineon License as required under Section 3.8 of the SDR/DDR License. By withholding notice of the terms, Rambus did not and could not negotiate a new license agreement with SEC in good faith.

217. All conditions precedent have been met.

218. SEC has suffered damages as a result of the breach by Rambus of Section 8.5 of the SDR/DDR License.

**COUNT III (BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING OF SECTIONS 3.8 AND 8.5 OF THE SDR/DDR LICENSE)**

219. SEC and SEA reallege and incorporate by reference Paragraphs 1-218 above as though fully set forth herein.

220. Under Section 9.1, the SDR/DDR License is to be governed by, and interpreted in accordance with, U.S. federal law and California law.

221. Under California law, Section 3.8 of the SDR/DDR License includes a duty of good faith and fair dealing owed by Rambus to SEC to inform SEC of the lower royalty rate provided for in the Rambus/Infineon License and to adjust Samsung's rate to the lower rate.

222. Rambus failed to inform SEC of the lower effective royalty rate provided for in the Rambus/Infineon License.

223. Rambus breached the duty of good faith and fair dealing of the SDR/DDR License by failing to inform SEC of the lower effective royalty rate provided for in the Rambus/Infineon License.

224. Under California law, the duty of good faith and fair dealing required Rambus to adjust the royalty rate paid by SEC to match any lower effective royalty rate paid by a third party.

225. Rambus failed to adjust the royalty rate paid by SEC to match the lower effective royalty rate provided for in the Rambus/Infineon License.

226. Rambus breached the duty of good faith and fair dealing by failing to adjust the royalty rate paid by SEC to match the lower effective royalty rate provided for in the Rambus/Infineon License.

227. Under California law, Section 8.5 of the SDR/DDR License includes a duty owed by Rambus to SEC to negotiate an extension or renewal of the SDR/DDR License in good faith.

228. Rambus failed to provide notice of the terms of the Rambus/Infineon License to SEC, thereby precluding good faith negotiations for the extension or renewal of the SDR/DDR License.

229. Rambus breached the duty of good faith and fair dealing of the SDR/DDR License by failing to provide notice of the terms of the Rambus/Infineon License to SEC. By withholding notice of the terms, Rambus did not and could not negotiate a new license agreement with SEC in good faith.

230. All conditions precedent have been met.

231. SEC has suffered damages as a result of the breach of the duty of good faith and fair dealing by Rambus of the SDR/DDR License.

**COUNT IV (AIDING AND ABETTING BREACH OF FIDUCIARY DUTY TO A  
CURRENT CLIENT)**

232. SEC and SEA reallege and incorporate by reference Paragraphs 1-231 above as though fully set forth herein.

1           233. As an in-house attorney for Samsung, Mr. Steinberg owed Samsung a  
2 fiduciary duty of utmost good faith and fair dealing and undivided loyalty and honesty in fact.

3           234. By actively working for Rambus in secret and contrary to Samsung's  
4 interests during the time he was employed as an attorney for Samsung, Mr. Steinberg breached his  
5 fiduciary duty to Samsung.

6           235. While an employee for Samsung, Mr. Steinberg concealed his dual  
7 representation of Samsung and Rambus and represented to Samsung that he was not working for  
8 both Rambus and Samsung at the same time. Thus, Samsung had no notice of any deception on  
9 Mr. Steinberg's part and had no reason to investigate whether Mr. Steinberg worked for Rambus  
10 while employed as an attorney by Samsung.

11           236. Mr. Steinberg's failure to disclose his breach of his fiduciary duty to  
12 Samsung further violated his fiduciary duty toward Samsung.

13           237. Samsung was entitled to reasonably rely on Mr. Steinberg's silence because  
14 of its expectation that Mr. Steinberg would faithfully fulfill his fiduciary obligations.

15           238. Because Samsung was justifiably misled by Mr. Steinberg's  
16 misrepresentation and concealment of facts surrounding his dual employment by Samsung and  
17 Rambus, it did not discover, nor was it put on notice to investigate, Mr. Steinberg's breach of  
18 fiduciary duties he owed to Samsung as a current client.

19           239. Rambus knew that Mr. Steinberg was still employed as an attorney by  
20 Samsung when it engaged his services. It further knew that Samsung had not given permission for  
21 Mr. Steinberg to dually represent Samsung and Rambus. Rambus also knew of the fiduciary  
22 capacity in which Mr. Steinberg worked for Samsung and the duties that Mr. Steinberg owed to  
23 Samsung as a result.

24           240. By engaging Mr. Steinberg to represent Rambus knowing Mr. Steinberg  
25 owed fiduciary duties to Samsung as a current client, Rambus aided and abetted Mr. Steinberg in  
26 breaching those fiduciary duties.

27           241. Rambus also knew that Mr. Steinberg had a duty to disclose to Samsung, a  
28 current client, any breach of his fiduciary duty, and that Mr. Steinberg in fact failed to carry out this

1 duty. As a result, Rambus facilitated Mr. Steinberg's failure of his obligation to Samsung by  
2 secretly engaging Mr. Steinberg's services when it was aware that Mr. Steinberg was still employed  
3 as an attorney by Samsung.

4 242. Rambus knew that hiring Mr. Steinberg while he was still employed by  
5 Samsung would be considered contrary to the purpose of maintaining a profitable business alliance  
6 between Rambus and Samsung. Nevertheless, Rambus concealed from Samsung that it had  
7 secretly engaged Mr. Steinberg's services when Rambus was aware that Mr. Steinberg was still  
8 employed as an attorney by Samsung and facilitated Mr. Steinberg's silence on his dual  
9 employment and, upon information and belief, his use of information about Samsung's business  
10 and DRAM products in working for Rambus. Rambus actively concealed Mr. Steinberg's role by  
11 sponsoring false testimony in different courts by Mr. Steinberg, and upon information and belief,  
12 even when grudgingly admitting in 2006 that he did in fact do some work for Rambus while  
13 employed by Samsung, misrepresenting the nature and scope of that work. Upon information and  
14 belief Rambus destroyed documents showing the nature and extent of Mr. Steinberg's work by  
15 Rambus in an effort to conceal his breach of duty and Rambus's role in it.

16 243. Rambus, by its concealment, falsely represented to Samsung that it was still  
17 interested in faithfully remaining a business partner with Samsung in their profitable business  
18 alliance at a time when, as a result of its knowledge that Mr. Steinberg was breaching his fiduciary  
19 duties to Samsung at Rambus's request and on its behalf, and because Rambus sponsored false  
20 testimony, and upon information and belief continues to sponsor false testimony, as well as  
21 destruction of documents, to conceal this wrongdoing, Rambus had a duty to speak.

22 244. SEC and SEA were harmed by Rambus's aiding and abetting Mr.  
23 Steinberg's breach of his fiduciary duty to Samsung.

24 **Applicable Statute of Limitations Tolled by Discovery Rule**

25 245. As a result of Mr. Steinberg's and/or Rambus's concealment of his dual  
26 representation of Samsung and Rambus, Samsung did not discover and could not have discovered  
27 the circumstances giving rise to a breach of Mr. Steinberg's fiduciary duties owed to Samsung  
28 while working for them, nor of Rambus's role in Mr. Steinberg's breach of his fiduciary duties,

1 until it was revealed for the first time during the trial of *Rambus v. Infineon*, in the U.S. District  
2 Court for the Eastern District of Virginia in 2005. Specifically, heavily redacted legal invoices  
3 from Mr. Steinberg to Rambus dated in June of 1998, two months before Mr. Steinberg resigned  
4 from Samsung, were produced by Rambus for the very first time in connection with the *Infineon*  
5 unclean-hands trial in early 2005. Furthermore, Mr. Steinberg testified in a deposition introduced  
6 by video at the unclean-hands trial that he performed legal services for Rambus beginning in June  
7 1998. These documents and facts were not discoverable by Samsung or anyone else outside of  
8 Rambus before 2005, and would remain concealed today if Rambus had not included as entries on  
9 its *Infineon* privilege log two documents prepared by Mr. Steinberg in June and July of 1998.  
10 Indeed, Mr. Steinberg had previously falsely testified in 2001 and again in 2004 that he had *not*  
11 performed any legal work for Rambus prior to August 17, 1998, the date he resigned from  
12 Samsung. Mr. Steinberg's perjury was a specific act of fraud that concealed Rambus's aiding and  
13 abetting of Mr. Steinberg's breaches of his fiduciary duties to Samsung, its intentional interference  
14 with Mr. Steinberg's employment contract with Samsung, and Rambus's unfair business practices.  
15 Finally, even though Samsung knew by at least October 2000 that Mr. Steinberg was working as in-  
16 house counsel for Rambus – a fact that by itself was not disturbing to Samsung for the reasons  
17 described herein – Samsung could not have discovered Mr. Steinberg's use of Samsung  
18 confidential information until documents showing the true nature of Mr. Steinberg's work at  
19 Rambus, including actively working to help Rambus plan patent prosecution and enforcement  
20 strategies against DRAM manufacturers including Samsung as outlined in paragraphs 131-138  
21 above, were introduced for the first time during the *Infineon* unclean-hands trial in 2005. Once  
22 Rambus's employment of Neil Steinberg while an employee of Samsung was revealed to Samsung  
23 in 2005, however, Samsung was able to diligently investigate and pursue its claims against Rambus  
24 based on such conduct. Upon information and belief, Rambus and Mr. Steinberg continue to  
25 conceal the true nature and extent of their wrongdoing in testimony, interrogatory answers, and by  
26 documents previously destroyed.



**Applicable Statute of Limitations Tolled by Doctrine of Equitable Tolling**

246. Furthermore, Mr. Steinberg's misrepresentations to Samsung while working for Samsung, coupled with Rambus's continued assurances that Samsung was a valued business partner, helped conceal material facts that prevented Samsung from knowing or discovering the nature and extent of the injury suffered due to Mr. Steinberg's dual representation. Mr. Steinberg's concealment of his dual representation when he was under a duty to disclose those facts prevented Samsung from discovering that a breach of Mr. Steinberg's fiduciary duty had occurred, as Samsung was not otherwise on notice that Mr. Steinberg had breached his fiduciary duty by his dual representation of Samsung and Rambus.

247. Although Samsung knew at least by the time the SDR/DDR License was negotiated in October 2000 that Mr. Steinberg had gone to work for Rambus, Samsung was not thereby put on inquiry notice of its claims against Mr. Steinberg and Rambus relating to Mr. Steinberg's secret dual employment because, in light of the extensive, cooperative, and profitable business alliance that Samsung and Rambus had enjoyed since executing their first RDRAM license in 1994, Samsung knew of no reason to be alarmed at that time by Mr. Steinberg's employment at Rambus. Samsung also was not put on inquiry notice of its claims as a result of Rambus's institution of litigation against other DRAM manufacturers beginning in 2000 because Samsung was still licensed by Rambus at that time and continued to enjoy a friendly and profitable business alliance with Rambus, leaving Samsung no reason to suspect that Mr. Steinberg had any improper involvement with Rambus's preparations for those litigations. Rather, it was not until documents and testimony revealing Mr. Steinberg's secret retention by Rambus at a time when he was still under an employment agreement as in-house counsel for Samsung, as well as his improper use of Samsung confidential information, were introduced for the very first time in connection with the *Infineon* unclean-hands trial in early 2005 that Samsung was put on inquiry notice of this claim.

248. Rambus's concealment of its hiring of Mr. Steinberg while he was still an employee of Samsung and its affirmative misrepresentations to Samsung that it was still a faithful business partner to Samsung also helped conceal material facts that prevented Samsung from knowing or discovering the nature and extent of the injury suffered due to Mr. Steinberg's dual

1 representation. Rambus's concealment of his dual representation prevented Samsung from  
 2 discovering that a breach of Mr. Steinberg's fiduciary duty had occurred, as Samsung was not  
 3 otherwise on notice that Mr. Steinberg had breached his fiduciary duty by his dual representation of  
 4 Samsung and Rambus.<sup>5</sup>

5           249. As a result, the misrepresentation and nondisclosure practiced by Mr.  
 6 Steinberg and Rambus on Samsung, and the role Rambus played in Mr. Steinberg's  
 7 misrepresentation and nondisclosure, was not discovered until Mr. Steinberg's dual employment  
 8 was revealed for the first time during the trial of *Rambus v. Infineon*, in the U.S. District Court for  
 9 the Eastern District of Virginia in 2005. Once Rambus's employment of Neil Steinberg was  
 10 discovered by Samsung in 2005, Samsung was able to diligently investigate and pursue its claims  
 11 against Rambus based on such conduct. Upon information and belief, Rambus and Mr. Steinberg  
 12 continue to conceal the true nature and extent of their wrongdoing in testimony, interrogatory  
 13 answers, and by documents previously destroyed.

14 **COUNT V (AIDING AND ABETTING BREACH OF FIDUCIARY DUTY TO A FORMER**  
 15 **CLIENT)**

16           250. SEC and SEA reallege and incorporate by reference Paragraphs 1-249 above  
 17 as though fully set forth herein.

18           251. As a former in-house attorney for Samsung, Mr. Steinberg owed Samsung  
 19 those duties due to a former client, including the duty to not disclose information about Samsung's  
 20 business or to use it contrary to Samsung's interests, regardless of whether such information was  
 21 trade secret, and the duty to obtain informed consent before representing parties adverse to  
 22 Samsung in matters substantially related to those Mr. Steinberg worked on for Samsung.

23  
 24  
 25 <sup>5</sup> Tellingly, Vice Chancellor Strine denied Rambus's motion for summary judgment with respect to  
 26 Samsung's claims based on Neil Steinberg's dual employment, including aiding and abetting  
 27 breach of fiduciary duty to a current client, in related litigation in Delaware on December 4, 2006.  
 28 Based solely on the pleadings, the Delaware court found that Samsung raised a fact issue as to  
 whether it was fraudulently induced to release its claims against Rambus upon execution of the  
 SDR/DDR License. The relevant portions of the hearing transcript are attached as Exhibit C.

1           252. Despite these obligations to Samsung, Mr. Steinberg, upon information and  
2 belief, actively worked to help Rambus plan patent prosecution strategies, including actually  
3 working on patent applications, patent enforcement strategies, document handling and retention  
4 strategies for use in litigation, and to take other measures to extract royalties from manufacturers of  
5 DRAMs, including Samsung, as outlined in paragraphs 131-138 above. Mr. Steinberg did this  
6 without first obtaining informed consent from Samsung. Upon information and belief, Mr.  
7 Steinberg also used information about Samsung's business and DRAM products, as outlined in  
8 paragraphs 131-138 above, including but not limited to facts developed for the prosecution of the  
9 '956 patent and strategies for protection of Samsung's JEDEC-compliant products as partially  
10 implemented in the '956 patent, product roadmaps (plans for development of future products and  
11 plans for their release), and Samsung's own internal licensing discussions and internal litigation  
12 strategy discussions, while working for Rambus at a time he was under a duty not to disclose such  
13 information about Samsung's business or to use it contrary to Samsung's interests, regardless of  
14 whether such information was trade secret.

15           253. Mr. Steinberg further violated his fiduciary duty to Samsung by failing to  
16 disclose to Samsung his work for Rambus that was contrary to Samsung's interests or his use of  
17 information obtained while an attorney for Samsung.

18           254. Mr. Steinberg concealed from Samsung his work for Rambus that was  
19 adverse to Samsung and made use of Samsung information. Samsung, therefore, had no notice of  
20 any deception on Mr. Steinberg's part and therefore had no reason to investigate whether Mr.  
21 Steinberg's work for Rambus was adverse to Samsung or made use of Samsung information.

22           255. Samsung was entitled to reasonably rely on Mr. Steinberg's silence because  
23 of its expectation that Mr. Steinberg would obtain informed consent before working on matters  
24 adverse to Samsung and would faithfully safeguard Samsung's information.

25           256. Because Samsung was justifiably misled by Mr. Steinberg's  
26 misrepresentation and concealment of facts regarding the full nature of the work he performed for  
27 Rambus, it did not discover, nor was it put on notice to investigate, Mr. Steinberg's breach of  
28 fiduciary duties he owed to Samsung as a former client.

1           257. Rambus knew that Mr. Steinberg was employed as an attorney by Samsung.  
2 It further knew that Samsung had not given permission for Mr. Steinberg to work on matters  
3 adverse to Samsung or to disclose Samsung information. Rambus also knew of the fiduciary  
4 capacity in which Mr. Steinberg worked for Samsung and the duties that Mr. Steinberg continued to  
5 owe Samsung as a result of his former representation.

6           258. By engaging Mr. Steinberg to represent Rambus knowing Mr. Steinberg  
7 owed fiduciary duties to Samsung as a former client, Rambus aided and abetted Mr. Steinberg in  
8 breaching those fiduciary duties.

9           259. Rambus also knew that Mr. Steinberg had a duty to disclose to Samsung, a  
10 former client, of any breach of his fiduciary duty, and that Mr. Steinberg in fact failed to carry out  
11 this duty. As a result, Rambus facilitated Mr. Steinberg's failure of his obligation to Samsung by  
12 secretly engaging Mr. Steinberg's services for matters adverse to Samsung and that made use of  
13 confidential Samsung information.

14           260. Rambus knew that using Mr. Steinberg's services on matters adverse to  
15 Samsung or that made use of Samsung information would be considered contrary to the purpose of  
16 maintaining a profitable business alliance between Rambus and Samsung. Nevertheless, Rambus  
17 concealed from Samsung that it had secretly engaged Mr. Steinberg's services on matters adverse  
18 to Samsung or that, on information and belief, made use of Samsung information and facilitated  
19 Mr. Steinberg's silence on his work for Rambus on matters adverse to Samsung and, upon  
20 information and belief, his use of information about Samsung's business and DRAM products in  
21 working for Rambus.

22           261. Rambus, by its concealment, falsely represented to Samsung that it was still  
23 interested in faithfully remaining a business partner with Samsung in their profitable business  
24 alliance at a time when, as a result of its knowledge that Mr. Steinberg was breaching his fiduciary  
25 duties to Samsung at Rambus's request and on its behalf, and because Rambus sponsored false  
26 testimony, and upon information and belief continues to sponsor false testimony, as well as  
27 destruction of documents, to conceal this wrongdoing, Rambus had a duty to speak.

262. SEC and SEA were harmed by Rambus's aiding and abetting Mr. Steinberg's breach of his fiduciary duty to Samsung.

**Applicable Statute of Limitations Tolloed by Discovery Rule**

263. As a result of Mr. Steinberg's and/or Rambus's failure to disclose the full nature of his work for Rambus in violation of his continuing obligations to Samsung, Samsung did not discover and could not have discovered the circumstances giving rise to a breach of Mr. Steinberg's fiduciary duties owed to Samsung as a former client, nor of Rambus's role in Mr. Steinberg's breach of his fiduciary duties, until it was revealed for the first time during the trial of *Rambus v. Infineon*, in the U.S. District Court for the Eastern District of Virginia in 2005. Specifically, heavily redacted legal invoices from Mr. Steinberg to Rambus dated in June and July of 1998, two months before Mr. Steinberg resigned from Samsung, were produced by Rambus for the very first time in connection with the *Infineon* unclean-hands trial in early 2005. Furthermore, Mr. Steinberg testified in a deposition introduced by video at the unclean-hands trial that he performed legal services for Rambus beginning in June 1998. These documents and facts were not discoverable by Samsung or anyone else outside of Rambus before 2005, and would remain concealed today if Rambus had not included as entries on its *Infineon* privilege log two documents prepared by Mr. Steinberg in June and July of 1998. Indeed, Mr. Steinberg had previously falsely testified in 2001 and again in 2004 that he had *not* performed any legal work for Rambus prior to August 17, 1998, the date he resigned from Samsung. Mr. Steinberg's perjury was a specific act of fraud that concealed Rambus's aiding and abetting of Mr. Steinberg's breaches of his fiduciary duties to Samsung, its intentional interference with Mr. Steinberg's employment contract with Samsung, and Rambus's unfair business practices. Finally, even though Samsung knew by at least October 2000 that Mr. Steinberg was working as in-house counsel for Rambus – a fact that by itself was not disturbing to Samsung for the reasons described herein – Samsung could not have discovered Mr. Steinberg's use of Samsung confidential information until documents showing the true nature of Mr. Steinberg's work at Rambus, including actively working to help Rambus plan patent prosecution and enforcement strategies against DRAM manufacturers including Samsung as outlined in paragraphs 131-138 above, were introduced for the first time during the *Infineon*

1 unclean-hands trial in 2005. Once the full scope of Rambus's employment of Mr. Steinberg was  
2 revealed to Samsung in 2005, however, Samsung was able to diligently investigate and pursue its  
3 claims against Rambus based on such conduct. Upon information and belief, Rambus and Mr.  
4 Steinberg continue to conceal the true nature and extent of their wrongdoing in testimony,  
5 interrogatory answers, and by documents previously destroyed.

6 **Applicable Statute of Limitations Tolled by Doctrine of Equitable Tolling**

7 264. Furthermore, Mr. Steinberg's misrepresentations to Samsung, coupled with  
8 Rambus's continued assurances that Samsung was a valued business partner, helped conceal  
9 material facts that prevented Samsung from knowing or discovering the nature and extent of the  
10 injury suffered due to Mr. Steinberg's employment by Rambus. Mr. Steinberg's failure to disclose  
11 the nature of his employment by Rambus when he was under a duty to do so prevented Samsung  
12 from discovering that a breach of Mr. Steinberg's fiduciary duty had occurred, as Samsung was not  
13 otherwise under notice that Mr. Steinberg had breached his fiduciary duty by working for Rambus  
14 on matters adverse to Samsung or that made use of Samsung information.

15 265. Although Samsung knew at least by the time the SDR/DDR License was  
16 negotiated in October 2000 that Mr. Steinberg had gone to work for Rambus, Samsung was not  
17 thereby put on inquiry notice of its claims against Mr. Steinberg and Rambus relating to Mr.  
18 Steinberg's secret dual employment because, in light of the extensive, cooperative, and profitable  
19 business alliance that Samsung and Rambus had enjoyed since executing their first RDRAM  
20 license in 1994, Samsung knew of no reason to be alarmed at that time by Mr. Steinberg's  
21 employment at Rambus. Samsung also was not put on inquiry notice of its claims as a result of  
22 Rambus's institution of litigation against other DRAM manufacturers beginning in 2000 because  
23 Samsung was still licensed by Rambus at that time and continued to enjoy a friendly and profitable  
24 business alliance with Rambus, leaving Samsung no reason to suspect that Mr. Steinberg had any  
25 improper involvement with Rambus's preparations for those litigations. Rather, it was not until  
26 documents and testimony revealing Mr. Steinberg's secret retention by Rambus at a time when he  
27 was still under an employment agreement as in-house counsel for Samsung, as well as his improper  
28

1 use of Samsung confidential information, were introduced for the very first time in connection with  
 2 the *Infineon* unclean-hands trial in early 2005 that Samsung was put on inquiry notice of this claim.

3 266. Rambus's concealment of its use of Mr. Steinberg's services on matters  
 4 adverse to Samsung or that, upon information and belief, made use of Samsung information and its  
 5 affirmative misrepresentations to Samsung that it was still a faithful business partner to Samsung  
 6 also helped conceal material facts that prevented Samsung from knowing or discovering the nature  
 7 and extent of the injury suffered due to Mr. Steinberg's work for Rambus. Rambus's concealment  
 8 of his work for it prevented Samsung from discovering that a breach of Mr. Steinberg's fiduciary  
 9 duty had occurred, as Samsung was not otherwise on notice that Mr. Steinberg had breached his  
 10 fiduciary duty by his work for Rambus.<sup>6</sup>

11 267. As a result, the misrepresentation and nondisclosure practiced by Mr.  
 12 Steinberg and Rambus on Samsung, and the role Rambus played in Mr. Steinberg's  
 13 misrepresentation and nondisclosure, was not revealed until the full scope of Mr. Steinberg's  
 14 employment for Rambus was revealed for the first time during the trial of *Rambus v. Infineon*, in  
 15 the U.S. District Court for the Eastern District of Virginia in 2005. Once the full scope of  
 16 Rambus's employment of Neil Steinberg was discovered in 2005, Samsung was able to diligently  
 17 investigate and pursue its claims against Rambus based on such conduct. Upon information and  
 18 belief, Rambus and Mr. Steinberg continue to conceal the true nature and extent of their  
 19 wrongdoing in testimony, interrogatory answers, and by documents previously destroyed.

#### 20 **COUNT VI (INTENTIONAL INTERFERENCE WITH CONTRACT)**

21 268. SEC and SEA reallege and incorporate by reference Paragraphs 1-267 above  
 22 as though fully restated herein.

23  
 24  
 25 <sup>6</sup> Tellingly, Vice Chancellor Strine denied Rambus's motion for summary judgment with respect to  
 26 Samsung's claims related to Neil Steinberg's dual employment, including aiding and abetting  
 27 breach of fiduciary duty to a former client, in related litigation in Delaware on December 4, 2006.  
 28 Based solely on the pleadings, the Delaware court found that Samsung raised a fact issue as to  
 whether it was fraudulently induced to release its claims against Rambus upon execution of the  
 SDR/DDR License. The relevant portions of the hearing transcript are attached as Exhibit C.



1           269. Rambus was aware that Mr. Steinberg was employed as in-house counsel for  
2 Samsung and under a written employment contract for a specific term. Rambus was further aware  
3 that at the time Mr. Steinberg's employment began with Rambus, his written employment contract  
4 had not been terminated and was still in effect. Also during this time, Rambus knew that Mr.  
5 Steinberg's contract included nondisclosure clauses and restrictions on additional employment.

6           270. Despite these contractual duties, Mr. Steinberg, upon information and belief,  
7 actively worked to help Rambus plan patent prosecution strategies, including actually working on  
8 patent applications, patent enforcement strategies, document handling and retention strategies for  
9 use in litigation, and to take other measures to extract royalties from manufacturers of DRAMs,  
10 including Samsung, as outlined in paragraphs 131-138 above. Upon information and belief, while  
11 employed at Samsung, Mr. Steinberg also used information about Samsung's business and DRAM  
12 products in connection with his work for Rambus, as outlined in paragraphs 131-138 above,  
13 including but not limited to facts developed for the prosecution of the '956 patent and strategies for  
14 protection of Samsung's JEDEC-compliant products as partially implemented in the '956 patent,  
15 product roadmaps (plans for development of future products and plans for their release), and  
16 Samsung's own internal licensing discussions and internal litigation strategy discussions, despite  
17 the fact that he was under contractual and fiduciary duties not to disclose such information about  
18 Samsung's business or use it contrary to Samsung's interests, regardless of whether such  
19 information was trade secret. Mr. Steinberg's work for Rambus, therefore, was in breach of his  
20 employment contract with Rambus.

21           271. Because Rambus knew of Mr. Steinberg's employment contract and his  
22 subsequent breach of that contract by performing services on behalf of Rambus, Rambus  
23 intentionally interfered with the Steinberg-Samsung employment contract when it hired Mr.  
24 Steinberg in February of 1998.

25           272. Mr. Steinberg further violated his contractual duty to Samsung by failing to  
26 disclose the full nature and duration of his work for Rambus.

27           273. Mr. Steinberg and Rambus concealed from Samsung Mr. Steinberg's work  
28 for Rambus that was contrary to Samsung's interests and that made use of Samsung information.

1 Samsung had no notice of any breach of the employment contract by Mr. Steinberg's and therefore  
2 did not discover and had no reason to investigate whether Mr. Steinberg worked for Rambus while  
3 employed as an attorney by Samsung or was working for Rambus contrary to Samsung's interests  
4 and with Samsung information.

5           274. Samsung was entitled to reasonably rely on Mr. Steinberg's silence regarding  
6 Rambus's interference with his employment contract with Samsung because of its expectation that  
7 Mr. Steinberg would faithfully fulfill both his fiduciary and contractual obligations.

8           275. Because Samsung was justifiably misled by Mr. Steinberg's  
9 misrepresentation and concealment of facts regarding the full nature of the work he performed for  
10 Rambus as well as the time period during which he worked for Rambus, it did not discover, nor  
11 was it put on notice to investigate, Mr. Steinberg's breach of contractual and fiduciary duties he  
12 owed to Samsung.

13           276. Rambus knew of Mr. Steinberg's contractual obligations to Samsung,  
14 including his obligations to disclose the full nature and duration of his employment by Rambus. By  
15 secretly engaging Mr. Steinberg's services in contravention of these duties, therefore, Rambus  
16 intentionally interfered with Mr. Steinberg's employment contract with Samsung and facilitated  
17 Mr. Steinberg's violation of those duties.

18           277. Rambus knew or should have known that the nature and duration of Mr.  
19 Steinberg's employment by Rambus would be considered contrary to the purpose of maintaining a  
20 profitable business alliance between Rambus and Samsung. Nevertheless, Rambus concealed from  
21 Samsung that it had secretly engaged Mr. Steinberg's services and facilitated Mr. Steinberg's  
22 silence on the full nature and duration of his work for Rambus.

23           278. Rambus, by its concealment, falsely represented to Samsung that it was still  
24 interested in faithfully remaining a business partner with Samsung in their profitable business  
25 alliance at a time when, as a result of its knowledge that Mr. Steinberg was breaching his fiduciary  
26 duties to Samsung at Rambus's request and on its behalf, and because Rambus sponsored false  
27 testimony, and upon information and belief continues to sponsor false testimony, as well as  
28 destruction of documents, to conceal this wrongdoing, Rambus had a duty to speak.

279. SEC and SEA were harmed by Rambus's intentional interference with Mr. Steinberg's employment contract.

**Applicable Statute of Limitations Tolloed by Discovery Rule**

280. As a result of the concealment of Mr. Steinberg's dual representation and of the full nature of the work he performed for Rambus, coupled with Rambus's continued assurances that Samsung was a valued business partner, Samsung did not discover and could not have discovered the circumstances giving rise to Rambus's interference of Mr. Steinberg's employment contract with Samsung until it was revealed for the first time during the trial of *Rambus v. Infineon*, in the U.S. District Court for the Eastern District of Virginia in 2005. Specifically, heavily redacted legal invoices from Mr. Steinberg to Rambus dated in June and July of 1998, two months before Mr. Steinberg resigned from Samsung, were produced by Rambus for the very first time in connection with the *Infineon* unclean-hands trial in early 2005. Furthermore, Mr. Steinberg testified in a deposition introduced by video at the unclean-hands trial that he performed legal services for Rambus beginning in June 1998. These documents and facts were not discoverable by Samsung or anyone else outside of Rambus before 2005, and would remain concealed today if Rambus had not included as entries on its *Infineon* privilege log two documents prepared by Mr. Steinberg in June and July of 1998. Indeed, Mr. Steinberg had previously falsely testified in 2001 and again in 2004 that he had *not* performed any legal work for Rambus prior to August 17, 1998, the date he resigned from Samsung. Mr. Steinberg's perjury was a specific act of fraud that concealed Rambus's aiding and abetting of Mr. Steinberg's breaches of his fiduciary duties to Samsung, its intentional interference with Mr. Steinberg's employment contract with Samsung, and Rambus's unfair business practices. Finally, even though Samsung knew by at least October 2000 that Mr. Steinberg was working as in-house counsel for Rambus – a fact that by itself was not disturbing to Samsung for the reasons described herein – Samsung could not have discovered Mr. Steinberg's use of Samsung confidential information until documents showing the true nature of Mr. Steinberg's work at Rambus, including actively working to help Rambus plan patent prosecution and enforcement strategies against DRAM manufacturers including Samsung as outlined in paragraphs 131-138 above, were introduced for the first time during the *Infineon*

1 unclean-hands trial in 2005. Once the full nature and duration of Rambus's employment of Mr.  
2 Steinberg was revealed to Samsung in 2005, however, Samsung was able to diligently investigate  
3 and pursue its claims against Rambus based on such conduct. Upon information and belief,  
4 Rambus and Mr. Steinberg continue to conceal the true nature and extent of their wrongdoing in  
5 testimony, interrogatory answers, and by documents previously destroyed.

6 **Applicable Statute of Limitations Tolloed by Doctrine of Equitable Tolling**

7 281. Furthermore, Mr. Steinberg's false representations to Samsung helped  
8 conceal material facts that prevented Samsung from knowing or discovering the nature and extent  
9 of the injury suffered due to Mr. Steinberg's employment by Rambus. Mr. Steinberg's  
10 concealment of the nature and duration of his employment by Rambus when he was under a duty to  
11 do so prevented Samsung from determining that Rambus had intentionally interfered with Mr.  
12 Steinberg's employment contract with Samsung, as Samsung was not otherwise under notice that  
13 Mr. Steinberg had breached his employment contract by working for Rambus while employed by  
14 Samsung and also by working for Rambus on matters adverse to Samsung or that made use of  
15 Samsung information.

16 282. Although Samsung knew at least by the time the SDR/DDR License was  
17 negotiated in October 2000 that Mr. Steinberg had gone to work for Rambus, Samsung was not  
18 thereby put on inquiry notice of its claims against Mr. Steinberg and Rambus relating to Mr.  
19 Steinberg's secret dual employment because, in light of the extensive, cooperative, and profitable  
20 business alliance that Samsung and Rambus had enjoyed since executing their first RDRAM  
21 license in 1994, Samsung knew of no reason to be alarmed at that time by Mr. Steinberg's  
22 employment at Rambus. Samsung also was not put on inquiry notice of its claims as a result of  
23 Rambus's institution of litigation against other DRAM manufacturers beginning in 2000 because  
24 Samsung was still licensed by Rambus at that time and continued to enjoy a friendly and profitable  
25 business alliance with Rambus, leaving Samsung no reason to suspect that Mr. Steinberg had any  
26 improper involvement with Rambus's preparations for those litigations. Rather, it was not until  
27 documents and testimony revealing Mr. Steinberg's secret retention by Rambus at a time when he  
28 was still under an employment agreement as in-house counsel for Samsung, as well as his improper

1 use of Samsung confidential information, were introduced for the very first time in connection with  
 2 the *Infineon* unclean-hands trial in early 2005 that Samsung was put on inquiry notice of this claim.

3 283. Rambus's concealment of the full nature and duration of Mr. Steinberg's  
 4 employment by Rambus and its affirmative misrepresentations to Samsung that it was still a  
 5 faithful business partner to Samsung also helped conceal material facts that prevented Samsung  
 6 from knowing or discovering the nature and extent of the injury suffered due to Mr. Steinberg's  
 7 work for Rambus. Rambus's concealment of his work for it prevented Samsung from discovering  
 8 that a breach of Mr. Steinberg's fiduciary duty had occurred, as Samsung was not otherwise on  
 9 notice that Mr. Steinberg had breached his fiduciary duty by his work for Rambus.<sup>7</sup>

10 284. As a result, the misrepresentation and nondisclosure practiced by Mr.  
 11 Steinberg and Rambus on Samsung was not disclosed until the full scope and duration of Mr.  
 12 Steinberg's employment for Rambus was revealed for the first time during the trial of *Rambus v.*  
 13 *Infineon*, in the U.S. District Court for the Eastern District of Virginia in 2005. Once the full scope  
 14 and duration of Rambus's employment of Neil Steinberg was disclosed to Samsung in 2005,  
 15 Samsung was able to diligently investigate and pursue its claims against Rambus based on such  
 16 conduct. Upon information and belief, Rambus and Mr. Steinberg continue to conceal the true  
 17 nature and extent of their wrongdoing in testimony, interrogatory answers, and by documents  
 18 previously destroyed.

19 **COUNT VII (VIOLATION OF CALIFORNIA BUS. & PROF. CODE SECTION 17,200)**

20 285. SEC and SEA reallege and incorporate by reference Paragraphs 1-284 above  
 21 as though fully restated herein.

22 286. The herein-described conduct of Rambus, including its hiring of Mr.  
 23 Steinberg while still employed at Samsung, the "shred parties," and the persistent pursuit of patent  
 24

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25 <sup>7</sup> Tellingly, Vice Chancellor Strine denied Rambus's motion for summary judgment with respect to  
 26 Samsung's claims related to Neil Steinberg's dual employment, including intentional interference  
 27 with contract, in related litigation in Delaware on December 4, 2006. Based solely on the  
 28 pleadings, the Delaware court found that Samsung raised a fact issue as to whether it was  
 fraudulently induced to release its claims against Rambus upon execution of the SDR/DDR  
 License. The relevant portions of the hearing transcript are attached as Exhibit C.

1 claims beyond its original disclosures is an unlawful business practice and constitutes unfair and  
2 anticompetitive conduct toward Samsung, the DRAM industry, and the consuming public, in  
3 violation of California Business and Professions Code § 17200 *et. seq.*

4 287. Rambus has engaged in at least the following unlawful, unfair, and  
5 anticompetitive business practices, and deceptive conduct:

6 a. Misdemeanor spoliation of evidence in violation of California Penal  
7 Code § 135 as evident by the following facts: Rambus willfully destroyed or concealed  
8 documentary evidence to be produced in litigation against DRAM manufacturers with the intent to  
9 prevent it from being produced, as fully described herein;

10 b. Aiding and abetting the breach of fiduciary duty to a current client as  
11 evidenced by the following facts: Rambus knew that Mr. Steinberg was still employed as an  
12 attorney by Samsung when it engaged his services. It further knew that Samsung had not given  
13 permission for Mr. Steinberg to dually represent Samsung and Rambus. Rambus also knew of the  
14 fiduciary capacity in which Mr. Steinberg worked for Samsung and the duties that Mr. Steinberg  
15 owed to Samsung as a result. By engaging Mr. Steinberg to represent Rambus knowing Mr.  
16 Steinberg owed fiduciary duties to Samsung as a current client, therefore, Rambus aided and  
17 abetted Mr. Steinberg in breaching those fiduciary duties, as fully described herein.

18 c. Aiding and abetting the breach of fiduciary duty to a former client as  
19 evidenced by the following facts: Rambus knew that Mr. Steinberg was employed as an attorney  
20 by Samsung. It further knew that Samsung had not given permission for Mr. Steinberg to work on  
21 matters adverse to Samsung or to disclose Samsung information. Rambus also knew of the  
22 fiduciary capacity in which Mr. Steinberg worked for Samsung and the duties that Mr. Steinberg  
23 continued to owe Samsung as a result of his former representation. By engaging Mr. Steinberg to  
24 represent Rambus knowing Mr. Steinberg owed fiduciary duties to Samsung as a former client,  
25 therefore, Rambus aided and abetted Mr. Steinberg in breaching those fiduciary duties as fully  
26 described herein.

27 d. Intentional interference with contract as evidenced by the following  
28 facts: Rambus knew of Mr. Steinberg's contractual obligations to Samsung, including his

1 obligations to disclose the full nature and duration of his employment by Rambus. By secretly  
2 engaging Mr. Steinberg's services in contravention of these duties, therefore, Rambus intentionally  
3 interfered with Mr. Steinberg's employment contract with Samsung and facilitated Mr. Steinberg's  
4 violation of those duties as fully described in herein.

5 e. Unfair and anticompetitive business practices against DRAM  
6 manufacturers as a member of JEDEC as evidenced by the following facts: During the 1990's,  
7 Rambus participated actively in industry meetings on standards for SDRAMs and DDR SDRAMs  
8 at the Joint Electron Device Engineering Council ("JEDEC"). Rambus improperly used  
9 information it obtained as a result of its membership in JEDEC to secure additional patents and  
10 claims. Rambus's use of this information was in violation of policies applicable to all JEDEC  
11 members. Rambus failure to disclose to other members of JEDEC that it had taken information  
12 from JEDEC to craft its patent claims, only to seek to enforce its claims against JEDEC-compliant  
13 products many years after JEDEC members had invested heavily in the technology without notice  
14 of Rambus's conduct. This conduct was unfair and anticompetitive to all DRAM manufacturers  
15 that were members of JEDEC, including Samsung.

16 288. As a result of Rambus's unfair, unlawful, and anticompetitive conduct, SEC  
17 and SEA, as well as the consuming public, have been damaged. Such injuries to SEC and SEA  
18 include, but are not limited to, the loss of money and property in the form of attorneys' fees paid to  
19 protect and assert SEC's and SEA's right against such unfair conduct, and lost revenues, profits,  
20 and market share.

21 289. Samsung and the public at large, including manufacturers and end-users of  
22 DRAM and DDR technology, will continue to sustain injury and damages from this unfair conduct  
23 by Rambus unless Rambus is enjoined from continuing its unlawful conduct. Samsung is entitled  
24 to recover reasonable attorneys' fees and costs in connection with this Count, as well as all  
25 appropriate restitution and other equitable relief.

26 290. Rambus knew or should have known that its actions in engaging in unlawful  
27 and unfair business practices, and deceptive conduct would be considered contrary to the purpose  
28 of maintaining a profitable business alliance between Rambus and Samsung. Nevertheless,



1 Rambus concealed from Samsung that it had secretly engaged in unlawful and unfair business  
2 practices, and deceptive conduct.

3 291. Rambus, by its concealment, falsely represented to Samsung that it was still  
4 interested in faithfully remaining a business partner with Samsung in their profitable business  
5 alliance at a time when, as a result of its knowledge that Mr. Steinberg was breaching his fiduciary  
6 duties to Samsung at Rambus's request and on its behalf, and because Rambus sponsored false  
7 testimony, and upon information and belief continues to sponsor false testimony, as well as  
8 destruction of documents, to conceal this wrongdoing, Rambus had a duty to speak.

9 **Applicable Statute of Limitations Tolled by Discovery Rule**

10 292. Samsung did not discover and could not have discovered Rambus's  
11 destruction of documents in anticipation of litigation with Samsung, its unfair employment of Neil  
12 Steinberg, or the full nature and extent of the unfair and anticompetitive conduct by Rambus until  
13 the actions of Rambus and Mr. Steinberg were revealed publicly in a trial in *Rambus v. Infineon*, in  
14 the U.S. District Court for the Eastern District of Virginia in 2005. Specifically, voluminous  
15 Rambus documents produced for the very first time in connection with the *Infineon* unclean-hands  
16 trial in early 2005 catalogued Rambus's adoption of a document retention policy in early 1998, its  
17 massive destruction of documents during at least three separate company-wide "Shred Days," and  
18 its instructions to outside patent counsel to destroy numerous documents from his Rambus patent  
19 files – documents that a patent-infringement defendant might use to defend against Rambus's  
20 infringement claims. These documents and facts were not discoverable by Samsung or anyone else  
21 outside of Rambus before 2005, and would remain concealed today if the *Infineon* court had not  
22 broadly pierced Rambus's attorney-client privilege under the crime-fraud exception during  
23 preparations for the unclean-hands trial. In addition, heavily redacted legal invoices from Mr.  
24 Steinberg to Rambus dated in June and July of 1998, two months before Mr. Steinberg resigned  
25 from Samsung, were produced by Rambus for the very first time in connection with the *Infineon*  
26 unclean-hands trial in early 2005. Furthermore, Mr. Steinberg testified in a deposition introduced  
27 by video at the unclean-hands trial that he performed legal services for Rambus beginning in June  
28 1998. These documents and facts were not discoverable by Samsung or anyone else outside of

1 Rambus before 2005, and would remain concealed today if Rambus had not included as entries on  
 2 its *Infineon* privilege log two documents prepared by Mr. Steinberg in June and July of 1998.  
 3 Indeed, Mr. Steinberg had previously falsely testified in 2001 and again in 2004 that he had *not*  
 4 performed any legal work for Rambus prior to August 17, 1998, the date he resigned from  
 5 Samsung. Mr. Steinberg's perjury was a specific act of fraud that concealed Rambus's aiding and  
 6 abetting of Mr. Steinberg's breaches of his fiduciary duties to Samsung, its intentional interference  
 7 with Mr. Steinberg's employment contract with Samsung, and Rambus's unfair business practices.  
 8 Finally, even though Samsung knew by at least October 2000 that Mr. Steinberg was working as in-  
 9 house counsel for Rambus – a fact that by itself was not disturbing to Samsung for the reasons  
 10 described herein – Samsung could not have discovered Mr. Steinberg's use of Samsung  
 11 confidential information until documents showing the true nature of Mr. Steinberg's work at  
 12 Rambus, including actively working to help Rambus plan patent prosecution and enforcement  
 13 strategies against DRAM manufacturers including Samsung as outlined in paragraphs 131-138  
 14 above, were introduced for the first time during the *Infineon* unclean-hands trial in 2005. Once  
 15 Rambus's unfair conduct was revealed to Samsung in 2005, however, Samsung was able to  
 16 diligently investigate and pursue any potential claims against Rambus. Upon information and  
 17 belief, Rambus and Mr. Steinberg continue to conceal the true nature and extent of their  
 18 wrongdoing in testimony, interrogatory answers, and by documents previously destroyed.

19 **Applicable Statute of Limitations Tolted by Doctrine of Equitable Tolling**

20 293. Furthermore, the concealment of their actions by Mr. Steinberg and Rambus  
 21 prevented Samsung from knowing the full nature and extent of the injury suffered by Samsung due  
 22 to Rambus's unfair and anticompetitive conduct. Although Samsung knew at least by the time the  
 23 SDR/DDR License was negotiated in October 2000 that Mr. Steinberg had gone to work for  
 24 Rambus, Samsung was not thereby put on inquiry notice of its claims against Mr. Steinberg and  
 25 Rambus relating to Mr. Steinberg's secret dual employment because, in light of the extensive,  
 26 cooperative, and profitable business alliance that Samsung and Rambus had enjoyed since  
 27 executing their first RDRAM license in 1994, Samsung knew of no reason to be alarmed at that  
 28 time by Mr. Steinberg's employment at Rambus. Samsung also was not put on inquiry notice of its

1 claims as a result of Rambus's institution of litigation against other DRAM manufacturers  
2 beginning in 2000 because Samsung was still licensed by Rambus at that time and continued to  
3 enjoy a friendly and profitable business alliance with Rambus, leaving Samsung no reason to  
4 suspect that Mr. Steinberg had any improper involvement with Rambus's preparations for those  
5 litigations. Rather, it was not until documents and testimony revealing Mr. Steinberg's secret  
6 retention by Rambus at a time when he was still under an employment agreement as in-house  
7 counsel for Samsung, as well as his improper use of Samsung confidential information, were  
8 introduced for the very first time in connection with the *Infineon* unclean-hands trial in early 2005  
9 that Samsung was put on inquiry notice of this claim

10           294. Rambus's concealment of its hiring of Mr. Steinberg while he was still an  
11 employee of Samsung and its affirmative misrepresentations to Samsung that it was still a faithful  
12 business partner to Samsung also helped conceal material facts that prevented Samsung from  
13 knowing or discovering the nature and extent of the injury suffered due to Rambus's unlawful,  
14 unfair, and anticompetitive conduct.<sup>8</sup>

15           295. As a result, Samsung was not aware of the full nature and extent of the unfair  
16 and anticompetitive conduct by Rambus until the actions of Rambus and Mr. Steinberg were  
17 revealed during the trial of *Rambus v. Infineon*, in the U.S. District Court for the Eastern District of  
18 Virginia in 2005. Once Rambus's unfair conduct was disclosed, Samsung was able to diligently  
19 investigate and pursue any potential claims against Rambus. Upon information and belief, Rambus  
20 and Mr. Steinberg continue to conceal the true nature and extent of their wrongdoing in testimony,  
21 interrogatory answers, and by documents previously destroyed.

22  
23  
24  
25 <sup>8</sup> Tellingly, Vice Chancellor Strine denied Rambus's motion for summary judgment with respect to  
26 Samsung's claims related to Neil Steinberg's dual employment, including violation of Cal. Bus. &  
27 Prof. Code § 17200, in related litigation in Delaware on December 4, 2006. Based solely on the  
28 pleadings, the Delaware court found that Samsung raised a fact issue as to whether it was  
fraudulently induced to release its claims against Rambus upon execution of the SDR/DDR  
License. The relevant portions of the hearing transcript are attached as Exhibit C.

**COUNT VIII (DECLARATORY JUDGMENT OF NONINFRINGEMENT)**

296. SEC and SEA reallege and incorporate by reference Paragraphs 1-295 above as though fully set forth herein.

297. An actual and justiciable controversy exists between SEC, SEA and Rambus with respect to the '184, '097, '285, '051, '789, '897, '6,446, '281, '037, '295, '1,446, '5,020, '696, and '598 Patents because Rambus has brought this action against Samsung alleging that Samsung infringes the '184, '097, '285, '051, '789, '897, '6,446, '281, '037, '295, '1,446, '5,020, '696, and '598 Patents. Absent a declaration of noninfringement, invalidity, and unenforceability, Rambus will continue to wrongfully assert the '184, '097, '285, '051, '789, '897, '6,446, '281, '037, '295, '1,446, '5,020, '696, and '598 Patents against Samsung, and thereby cause SEC and SEA irreparable injury and damage.

298. SEC and SEA have not infringed the '184, '097, '285, '051, '789, '897, '6,446, '281, '037, '295, '1,446, '5,020, '696, and '598 Patents, either directly or indirectly, literally or under the doctrine of equivalents, willfully, or otherwise, and SEC and SEA are entitled to a declaration to that effect.

**COUNT IX (DECLARATORY JUDGMENT OF INVALIDITY)**

299. SEC and SEA reallege and incorporate by reference Paragraphs 1-298 above as though fully set forth herein.

300. An actual and justiciable controversy exists between SEC, SEA and Rambus with respect to the '184, '097, '285, '051, '789, '897, '6,446, '281, '037, '295, '1,446, '5,020, '696, and '598 Patents because Rambus has brought this action against Samsung alleging that Samsung infringes the '184, '097, '285, '051, '789, '897, '6,446, '281, '037, '295, '1,446, '5,020, '696, and '598 Patents. Absent a declaration of noninfringement, invalidity, and unenforceability, Rambus will continue to wrongfully assert the '184, '097, '285, '051, '789, '897, '6,446, '281, '037, '295, '1,446, '5,020, '696, and '598 Patents against Samsung, and thereby cause SEC and SEA irreparable injury and damage.

301. The '184, '097, '285, '051, '789, '897, '6,446, '281, '037, '295, '1,446, '5,020, '696, and '598 Patents are invalid for failure to meet the "Conditions for Patentability" of

35 U.S.C. §§ 102 and 103 because the alleged inventions thereof are taught by, suggested by, and/or are obvious in view of, the prior art, and no claim of the '184, '097, '285, '051, '789, '897, '6,446, '281, '037, '295, '1,446, '5,020, '696, and '598 Patents can be validly construed to cover any Samsung device, system or operating method related to DRAM memory. Samsung is entitled to a declaration to that effect.

302. The '184, '097, '285, '051, '789, '897, '6,446, '281, '037, '295, '1,446, '5,020, '696, and '598 Patents are invalid for failure to meet the "Specification" requirements of 35 U.S.C. § 112 because the written specifications thereof do not describe the alleged inventions and the manner and process of making and using them in the form required by § 112, and no claim of the '184, '097, '285, '051, '789, '897, '6,446, '281, '037, '295, '1,446, '5,020, '696, and '598 Patents can be validly construed to cover any Samsung device, system or operating method related to DRAM memory. Samsung is entitled to a declaration to that effect.

#### **COUNT X (DECLARATORY JUDGMENT OF UNENFORCEABILITY)**

303. SEC and SEA reallege and incorporate by reference Paragraphs 1-302 above as though fully set forth herein.

304. An actual and justiciable controversy exists between SEC, SEA and Rambus with respect to the '184, '097, '285, '051, '789, '897, '6,446, '281, '037, '295, '1,446, '5,020, '696, and '598 Patents because Rambus has brought this action against Samsung alleging that Samsung infringes the '184, '097, '285, '051, '789, '897, '6,446, '281, '037, '295, '1,446, '5,020, '696, and '598 Patents. Absent a declaration of noninfringement, invalidity, and unenforceability, Rambus will continue to wrongfully assert the '184, '097, '285, '051, '789, '897, '6,446, '281, '037, '295, '1,446, '5,020, '696, and '598 Patents against Samsung, and thereby cause SEC and SEA irreparable injury and damage.

305. The '184, '097, '285, '051, '789, '897, '6,446, '281, '037, '295, '1,446, '5,020, '696, and '598 Patents are unenforceable under the provisions of Title 35, United States Code and the equitable doctrines of prosecution laches, unclean hands, and estoppel, and SEC and SEA are entitled to a declaration to that effect.

306. Rambus unfairly and inequitably filed multiple continuation applications over a long period of time. Because Rambus failed to timely prosecute the '184, '097, '285, '051, '789, '897, '6,446, '281, '037, '295, '1,446, '5,020, '696, and '598 Patents, the '184, '097, '285, '051, '789, '897, '6,446, '281, '037, '295, '1,446, '5,020, '696, and '598 Patents are unenforceable due to prosecution laches, and SEC and SEA are entitled to a declaration to that effect.

### **PRAYER FOR RELIEF**

WHEREFORE, Samsung asks this Court to enter judgment in its favor against Rambus and grant the following relief:

A. A declaration that Rambus breached Section 3.8 of the SDR/DDR IC and SDR/DDR Memory Module Patent License Agreement Between Rambus Inc. and Samsung Electronics Co., Ltd., and an award of all damages Samsung Electronics Co., Ltd. suffered as a result of the breach;

B. A declaration that Rambus breached Section 8.5 of the SDR/DDR IC and SDR/DDR Memory Module Patent License Agreement Between Rambus Inc. and Samsung Electronics Co., Ltd., and an award of all damages Samsung Electronics Co., Ltd. suffered as a result of the breach;

C. A declaration that Rambus aided and abetted the breach of fiduciary duty owed to Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. by Neil Steinberg, and an award of all damages Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. suffered as a result of the breach;

D. A declaration that Rambus intentionally interfered with a contract involving Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc., and an award of all damages Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. suffered as a result of that intentional interference;

E. A declaration that Rambus violated California Bus. & Prof. Code Section 17,200, and an award of restitution for Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. for loss suffered as a result of Rambus's unfair conduct;

1 F. A declaration that the claims of U.S. Patent No. 6,182,184 are not infringed  
2 by Samsung Electronics Co., Ltd. or Samsung Electronics America, Inc.;

3 G. A declaration that the claims of U.S. Patent No. 6,260,097 are not infringed  
4 by Samsung Electronics Co., Ltd. or Samsung Electronics America, Inc.;

5 H. A declaration that the claims of U.S. Patent No. 6,266,285 are not infringed  
6 by Samsung Electronics Co., Ltd. or Samsung Electronics America, Inc.;

7 I. A declaration that the claims of U.S. Patent No. 6,314,051 are not infringed  
8 by Samsung Electronics Co., Ltd. or Samsung Electronics America, Inc.;

9 J. A declaration that the claims of U.S. Patent No. 6,493,789 are not infringed  
10 by Samsung Electronics Co., Ltd. or Samsung Electronics America, Inc.;

11 K. A declaration that the claims of U.S. Patent No. 6,496,897 are not infringed  
12 by Samsung Electronics Co., Ltd. or Samsung Electronics America, Inc.;

13 L. A declaration that the claims of U.S. Patent No. 6,546,446 are not infringed  
14 by Samsung Electronics Co., Ltd. or Samsung Electronics America, Inc.;

15 M. A declaration that the claims of U.S. Patent No. 6,564,281 are not infringed  
16 by Samsung Electronics Co., Ltd. or Samsung Electronics America, Inc.;

17 N. A declaration that the claims of U.S. Patent No. 6,584,037 are not infringed  
18 by Samsung Electronics Co., Ltd. or Samsung Electronics America, Inc.;

19 O. A declaration that the claims of U.S. Patent No. 6,697,295 are not infringed  
20 by Samsung Electronics Co., Ltd. or Samsung Electronics America, Inc.;

21 P. A declaration that the claims of U.S. Patent No. 6,701,446 are not infringed  
22 by Samsung Electronics Co., Ltd. or Samsung Electronics America, Inc.;

23 Q. A declaration that the claims of U.S. Patent No. 6,715,020 are not infringed  
24 by Samsung Electronics Co., Ltd. or Samsung Electronics America, Inc.;

25 R. A declaration that the claims of U.S. Patent No. 6,751,696 are not infringed  
26 by Samsung Electronics Co., Ltd. or Samsung Electronics America, Inc.;

27 S. A declaration that the claims of U.S. Patent No. 6,807,598 are not infringed  
28 by Samsung Electronics Co., Ltd. or Samsung Electronics America, Inc.;



1 T. A declaration that the claims of U.S. Patent No. 6,182,184 are invalid and  
2 unenforceable;

3 U. A declaration that the claims of U.S. Patent No. 6,260,097 are invalid and  
4 unenforceable;

5 V. A declaration that the claims of U.S. Patent No. 6,266,285 are invalid and  
6 unenforceable;

7 W. A declaration that the claims of U.S. Patent No. 6,314,051 are invalid and  
8 unenforceable;

9 X. A declaration that the claims of U.S. Patent No. 6,493,789 are invalid and  
10 unenforceable;

11 Y. A declaration that the claims of U.S. Patent No. 6,496,897 are invalid and  
12 unenforceable;

13 Z. A declaration that the claims of U.S. Patent No. 6,546,446 are invalid and  
14 unenforceable;

15 AA. A declaration that the claims of U.S. Patent No. 6,564,281 are invalid and  
16 unenforceable;

17 BB. A declaration that the claims of U.S. Patent No. 6,584,037 are invalid and  
18 unenforceable;

19 CC. A declaration that the claims of U.S. Patent No. 6,697,295 are invalid and  
20 unenforceable;

21 DD. A declaration that the claims of U.S. Patent No. 6,701,446 are invalid and  
22 unenforceable;

23 EE. A declaration that the claims of U.S. Patent No. 6,715,020 are invalid and  
24 unenforceable;

25 FF. A declaration that the claims of U.S. Patent No. 6,751,696 are invalid and  
26 unenforceable;

27 GG. A declaration that the claims of U.S. Patent No. 6,807,598 are invalid and  
28 unenforceable;

1 HH. An award to Samsung for Rambus's unjust enrichment, of all royalties  
2 collected by Rambus on all patents and licenses that benefited in any way from Mr. Steinberg's  
3 work for Rambus prior to termination of his employment by Samsung;

4 II. A declaration that any patents or patent applications that claim priority to any  
5 patent or patent application that pre-dates the termination of Mr. Steinberg's employment by  
6 Samsung may not be enforced against SEC, SEA, or any of their subsidiary or affiliate companies;

7 JJ. An injunction barring Rambus from enforcing its patents;

8 KK. A finding that this case is an exceptional case and an award of attorneys' fees  
9 and costs to Samsung pursuant to 35 U.S.C. § 285; and

10 LL. Any and all other relief to which it may be justly entitled.

11 Dated: January 24, 2007.

12 Respectfully submitted,

13  
14 By: /s/ Edward R. Reines

Edward R. Reines

15 Attorney for Defendants

16 SAMSUNG ELECTRONICS CO., LTD.,  
17 SAMSUNG ELECTRONICS AMERICA, INC.,  
18 SAMSUNG SEMICONDUCTOR, INC., and  
19 SAMSUNG AUSTIN SEMICONDUCTOR, L.P.  
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**DEMAND FOR JURY TRIAL**

Defendants SAMSUNG ELECTRONICS CO., LTD., SAMSUNG ELECTRONICS AMERICA, INC., SAMSUNG SEMICONDUCTOR, INC., and SAMSUNG AUSTIN SEMICONDUCTOR, L.P, hereby demand a trial by jury on all issues triable of right by a jury that are raised for determination by this Second Amended Answer and Counterclaims or that may be raised by any counterclaim to be filed herein.

Dated: January 24, 2007

WEIL, GOTSHAL & MANGES LLP

By: /s/ Edward R. Reines

Edward R. Reines

Attorney for Defendants

SAMSUNG ELECTRONICS CO., LTD.,  
SAMSUNG ELECTRONICS AMERICA, INC.,  
SAMSUNG SEMICONDUCTOR, INC., and  
SAMSUNG AUSTIN SEMICONDUCTOR, L.P.

**CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

Pursuant to Civil Local 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Dated: January 24, 2007

WEIL, GOTSHAL & MANGES LLP

By: /s/ Edward R. Reines

Edward R. Reines

Attorney for Defendants

SAMSUNG ELECTRONICS CO., LTD.,  
SAMSUNG ELECTRONICS AMERICA, INC.,  
SAMSUNG SEMICONDUCTOR, INC., and  
SAMSUNG AUSTIN SEMICONDUCTOR, L.P.